

STATES OF JERSEY



DRAFT CIVIL STATUS (ABOLITION OF LEGITIMACY ETC.) (JERSEY) LAW 202- (P.44/2025) – CHILDREN’S RIGHTS IMPACT ASSESSMENT

**Presented to the States on 27th May 2025
by the Minister for Justice and Home Affairs**

STATES GREFFE

CHILDREN'S RIGHTS IMPACT ASSESSMENT (CRIA)

PART 1: SCREENING

Name and title of Duty Bearer:	Minister for Justice and Home Affairs
Type of Duty Bearer: (Minister, Elected Member or States Assembly Body)	Minister
Assessment completed by (if not completed by duty bearer):	Policy Officer
Date:	23/05/2025

1) Name and brief description of the proposed decision

The subject of your CRIA may be a proposed law, policy or proposition and in accordance with the Law is referred to in this template as the '**decision**'

- What is the problem or issue the decision is trying to address?
- Do children experience this problem differently from adults?

Draft Civil Status (Abolition of Legitimacy Etc.) (Jersey) Law 202-

While commencing the work on the Children and Civil Status (Jersey) Law 2024 ("the 2024 Law"), it became apparent that the position contained in legitimacy legislation was outdated and out of step with the new Law. The 2024 Law will create new routes to recognise same-sex parents, and parents who use fertility treatment or surrogacy to have their children.

Legitimacy legislation results in all children, apart from those born to married mixed-sex parents, being labelled as illegitimate at birth. For example, a child born to a couple in a civil partnership would have the status of illegitimate, even though their parents' relationship is recognised in Jersey Law. The term is outdated and discriminatory, as nearly 50% of children are born to unmarried parents.

Historically, the children of unmarried parents were discriminated against in the law, this included a lack of equal inheritance rights. Jersey, like other jurisdictions, has pursued a long-term policy of removing the inequalities associated with illegitimacy gradually over time. In 2010, the States Assembly voted through P.7/2010, which made amendments to the Wills and Successions (Jersey) Law 1993, to allow for children whose parents were not married to inherit on near equal terms as children with legitimate status. In 2016, the States Assembly voted through P.76/2016, the Children and Adoption (Amendment) (Jersey) Law 2016, which allowed parental responsibility to be provided to unmarried fathers if they were registered on their child's birth certificate. This removed one of the few remaining material distinctions in rights conferred by legitimacy status. Legitimacy has become a status which conveys little or no tangible difference of rights within Jersey Law.

The introduction of civil-partnerships and same-sex marriage has improved equality by legally recognising modern family structures. The 2024 Law, when in force, will remove the customary law presumption that a husband is the father of his wife's child. With the enactment of the 2024 Law, the model of legitimacy would have completely fallen out of step with legally recognised family structures. The removal

of legitimacy status is therefore required to align with the improved rights afforded by the 2024 Law.

Policy development work on a Legitimacy Review commenced in 2024 to investigate the implications of abolishing legitimacy status and to consider potential legislative models to achieve this. The Family Law (Scotland) Act 2006, which amended the Law Reform (Parent and Child) (Scotland) Act 1986, abolished the status of illegitimacy under Scots Law with minimal legal impact. This was identified as the best model for Jersey to pursue.

The Draft Civil Status (Abolition of Legitimacy) (Jersey) Law 202- (“the Draft Legitimacy Law”) would completely abolish the status of legitimacy in Jersey, except for a few transitional circumstances and for the succession of hereditary titles and manorial rights. These exceptions were identified as areas where the consequences of abolishing the status of legitimacy would either impact retrospectively or create unacceptable levels of uncertainty regarding succession. The Draft Legitimacy Law makes consequential amendments to remove terminology related to legitimacy across the statute book and to repeal laws providing for the conferral of legitimacy status. It also includes some consequential provisions for birth registration and re-registration, addressing matters relating to paternity and the status of the parents’ union. The Draft Legitimacy Law would come into force on the same day as the 2024 Law, as part of a package of legislation to improve family rights.

2) Which groups of children and young people are likely to be affected?
Groups of children could include early years, primary or secondary education; young adults; children with additional learning needs; disabled children; children living in poverty; children from particular ethnic backgrounds; migrants; refugees; care experienced children and LGBTQ+ children

The Draft Legitimacy Law will positively impact all children in Jersey. It will particularly benefit children who are born to unmarried or same-sex parents, who will no longer be labelled with the discriminatory status of illegitimate at birth. Furthermore, all children will benefit as they will no longer be conferred with a status determined by the legal union of their parents. All children will simply be registered as children of their parents.

3) What is the likely impact of the proposed decision on children and on their rights?

- Identify any potential positive OR negative impacts and include indirect impacts on children and their rights as described in the UNCRC
- Will different groups of children be affected differently by this decision?

There will be no negative impacts as all children will now be treated equally, regardless of their parents. There is the benefit of removing an historical and outmoded legal term, which has discriminatory associations.

The savings provisions provide that legitimacy status would not be abolished for a very limited number of circumstances, such as the succession of manorial rights or hereditary titles. There are also a number of transitional savings provisions to prevent the law from being retrospectively applied. This will impact an extremely small number of people, and the savings provisions are required to prevent unintended consequences, especially regarding customary law.

4) Is a full Children's Rights Impact Assessment required? If you have identified impacts on children and their rights, a full CRIA should be completed. If no impacts are identified then a Full CRIA is not required, but please explain your rationale and how you reached this conclusion
Yes, due to the number of UNCRC rights that are engaged by the Draft Legitimacy Law.

If screening determines that a full CRIA is needed, complete Part 2

Part 2: FULL CHILDREN'S RIGHTS IMPACT ASSESSMENT

5) What will be the impacts (positive or negative) of the proposed decision on children's rights?			
For each of the UNCRC articles described below, click to identify any that may be relevant <input checked="" type="checkbox"/>			
Category	UNCRC Article	Impact? YES NO	
Guiding Principles	Non-discrimination (Art 2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Best interests of the Child (Art 3) to be a top priority	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Right to Life survival and development (Art 6)	<input type="checkbox"/>	<input type="checkbox"/>
	Respect for the child's views (Art 12)	<input type="checkbox"/>	<input type="checkbox"/>
Civil Rights & Freedoms	Right to birth registration, name and nationality (Art 7)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Right to an identity (Art 8)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Freedom of expression (Art 13)	<input type="checkbox"/>	<input type="checkbox"/>
	Freedom of thought, conscience, and religion (Art 14) Every child has the right to think and believe what they choose	<input type="checkbox"/>	<input type="checkbox"/>
	Freedom of association (Art 15) Every child has the right to meet with other children and to join groups and organisations	<input type="checkbox"/>	<input type="checkbox"/>
	Right to Privacy (Art 16) including family and home life	<input type="checkbox"/>	<input type="checkbox"/>
	Access to information from the media (Art 17) Right to access reliable information from a variety of sources, in a format that children can understand	<input type="checkbox"/>	<input type="checkbox"/>

	Protection against torture or other cruel, degrading or inhumane treatment or punishment (Art 37(a))	<input type="checkbox"/>	<input type="checkbox"/>
Family Environment and Alternative Care	Respect for the responsibilities, rights and duties of parents (or where applicable, extended family or community) to guide their child as they grow up (Art 5)	<input type="checkbox"/>	<input type="checkbox"/>
	Responsibilities of both parents in the upbringing and development of their child (Art 18)	<input type="checkbox"/>	<input type="checkbox"/>
	Children must not be separated from their parents against their will unless it is in their best interests (Art 9)	<input type="checkbox"/>	<input type="checkbox"/>
	Family reunification (Art 10)	<input type="checkbox"/>	<input type="checkbox"/>
	Abduction and non-return of children abroad (Art 11)	<input type="checkbox"/>	<input type="checkbox"/>
	Right to a standard of living that is good enough to meet the child's physical and social needs and support their development (Art 27)	<input type="checkbox"/>	<input type="checkbox"/>
	Special protection for children unable to live with their family (Art 20)	<input type="checkbox"/>	<input type="checkbox"/>
	Best interests of the child in the context of Adoption (Art 21)	<input type="checkbox"/>	<input type="checkbox"/>
	Review of treatment whilst in care (Art 25) If a child has been placed away from home for the purpose of care or protection (for example, with a foster family or in hospital), they have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.	<input type="checkbox"/>	<input type="checkbox"/>
	Protection from violence, abuse or neglect (Art 19)	<input type="checkbox"/>	<input type="checkbox"/>
	Recovery from trauma and reintegration (Art 39) Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive special support to help them recover their health, dignity, self-respect and social life.	<input type="checkbox"/>	<input type="checkbox"/>
Basic Health and Welfare	Rights of disabled children (Art 23)	<input type="checkbox"/>	<input type="checkbox"/>
	Right to health and health services (Art 24)	<input type="checkbox"/>	<input type="checkbox"/>
	Right to social security (Art 26)	<input type="checkbox"/>	<input type="checkbox"/>
	Right to adequate standard of living (Art 27)	<input type="checkbox"/>	<input type="checkbox"/>
Education, Leisure and Cultural Activities	Right to education (Art 28)	<input type="checkbox"/>	<input type="checkbox"/>
	Goals of education (Art 29) Education must develop every child's personality, talents and abilities to the full	<input type="checkbox"/>	<input type="checkbox"/>

	Leisure, play and culture (Art 31) Every child has the right to relax, play and take part in cultural and artistic activities	<input type="checkbox"/>	<input type="checkbox"/>
Special Protection Measures	Special protection for refugee children (Art 22)	<input type="checkbox"/>	<input type="checkbox"/>
	Children and armed conflict (Art 38 and Optional Protocol #1) Governments must do everything they can to protect and care for children affected by war and armed conflict.	<input type="checkbox"/>	<input type="checkbox"/>
	Children and juvenile justice (Art 40) Right to be treated with dignity and respect, right to legal assistance and a fair trial that takes account of age.	<input type="checkbox"/>	<input type="checkbox"/>
	Inhumane treatment and detention (Art 37 (b)-(d)) Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible.	<input type="checkbox"/>	<input type="checkbox"/>
	Recovery from trauma and reintegration (Art 39) Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive special support to help them recover their health, dignity, self-respect and social life	<input type="checkbox"/>	<input type="checkbox"/>
	Child labour and right to be protected from economic exploitation (Art 32)	<input type="checkbox"/>	<input type="checkbox"/>
	Drug abuse (Art 33)	<input type="checkbox"/>	<input type="checkbox"/>
	Sexual exploitation (Art 34)	<input type="checkbox"/>	<input type="checkbox"/>
	Abduction, sale and trafficking of children (Art 35)	<input type="checkbox"/>	<input type="checkbox"/>
	Protection from other forms of exploitation including for political activities, by the media or for medical research (Art 36)	<input type="checkbox"/>	<input type="checkbox"/>
	Children belonging to a minority or an indigenous group (Art 30)	<input type="checkbox"/>	<input type="checkbox"/>
	Optional Protocol on the sale of children, child prostitution and child pornography	<input type="checkbox"/>	<input type="checkbox"/>
	Optional protocol on the involvement of children in armed conflict	<input type="checkbox"/>	<input type="checkbox"/>

6) Information and research What evidence has been used to inform your assessment?		
Evidence collected (include links to relevant publications)	What did the evidence tell you?	What are the data gaps, if any?
Jersey position on illegitimacy: Succession Rights for Children Born out of	The impact of illegitimacy upon the conferral of material rights in Jersey.	There is uncertainty around legitimacy status in relation to the succession of hereditary

Wedlock by the Legislation Committee (R.C. 32/1999) Inheritance rights of children born outside wedlock in Jersey – The event horizon (jerseylaw.je) Draft Wills and Successions (Amendment) (Jersey) Law 201-(P.7/2010): amendment		titles, honours, and manorial rights.
<p>Scottish model - the abolition of legitimacy status:</p> <p>Family law: report on illegitimacy (SLC 82) (scotlawcom.gov.uk)</p> <p>Report on Family Law (Scot Law Com No 135) by Scottish Law Commission (1992)</p> <p>Family Law (Scotland) Act 2006</p> <p>Family Law (Scotland) Act 2006 6th Report, 2016 (Session 4): Post-legislative Scrutiny of the Family Law (Scotland) Act 2006</p>	The legislative model used to abolish the status of legitimacy within Scots Law.	None
<p>English model - equalising rights for people with illegitimacy status:</p> <p>Family Law: Illegitimacy (Working Paper No. 74) by the Law Commission (1979)</p> <p>Family Law: Illegitimacy (Law Com. No. 118) by the Law Commission (1982)</p>	The policy model in England to equalise rights of people with illegitimacy status.	None
Scrutiny Reports:	CEHA Scrutiny Panel position on the removal of legitimacy status.	None.

P.6-2022 Com - CEHA Panel S.R.2-2024 CEHA Scrutiny Panel Report - Review Of The Children And Civil Status (Amendments) (Jersey) Law 202- 13th March 2024		
<p>Customary Law:</p> <p>Le Grand Coutumier (Translation by Everard)</p> <p>Traité Du Droit Coutumier De L'isle De Jersey by C.S. Le Gros (1943)</p>	<p>The customary law position on illegitimacy and any customary laws which may be impacted by abolishing the status of illegitimacy.</p>	<p>There is uncertainty around legitimacy status in relation to the succession of hereditary titles, honours, and manorial rights.</p>

<p>7) Engagement with children What groups of children and young people (or those who speak on their behalf, such as social workers, teachers or youth workers) have been directly or indirectly involved in developing the decision?</p>		
Groups consulted	How they were involved	What were the findings?
CEHA Scrutiny Panel	Scrutiny Hearings and Briefings. Recommendations from the Panel.	The CEHA Panel were supportive of policy review work to develop the Draft Legitimacy Law.
Legislative Advisory Panel	Briefing and providing drafts of the legislation.	The Panel were broadly supportive of the abolition of legitimacy.
Children's Commissioner	Briefing	The Children's Commissioner was supportive of the proposed changes.
Superintendent Registrar	Consultation on the development of the legislation and operational delivery of changes.	Some historic issues with paternity presumption were identified and new routes to registration and re-registration were developed.

<p>8) Assessing Impact on children's rights Based on the information collected and analysed above, what likely impact will the proposed decision have on the specific children's rights identified in question 5)?</p>
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Relevant UNCRC Articles (rights) identified in Q5	Describe the positive or negative impacts on these rights	Which group(s) of children are likely to be affected?
Article 2 (non-discrimination) The Convention applies to every child without discrimination, whatever their ethnicity, sex, religion, language, abilities or any other status, whatever they think or say, whatever their family background.	Article 2 UNCRC is given a broad interpretation and the UN Committee on the Rights of the Child has focussed frequently on discrimination against children born “out of wedlock”. It is likely that provisions in Jersey law that determine a child to be illegitimate would be considered incompatible with Article 2 UNCRC in principle.	All children born in Jersey.
Article 3 (best interests of the child) The best interests of the child must be a top priority in all decisions and actions that affect children.	It is in the best interests of all children that they should have their birth registered equally, as a child of their parent or parents, with no discriminatory status based on their parent’s relationship. The status of illegitimacy as it amounts to an arbitrary and pejorative distinction in law, which is without purpose or meaningful relevance.	All children born in Jersey.
Article 7 (birth registration, name, nationality, care) Every child has the right to be registered at birth, to have a name and nationality, and, as far as possible, to know and be cared for by their parents.	Article 2(2) of the Legitimacy (Jersey) Law 1973 is repealed removing the “presumption that the husband is the father of the child which may be rebutted only by strong and satisfactory evidence to the contrary.” Instead, all children will simply be registered as the children of their parent or parents, without a presumption regarding legitimacy.	All children born in Jersey.
Article 8 Every child has the right to an identity. Governments	All children will be registered as the children of their parent or parents,	All children born in Jersey.

must respect and protect that right, and prevent the child's name, nationality or family relationships from being changed unlawfully.	irrespective of their parents' relationship.	
<p>9) Weighing positive and negative impacts</p> <ul style="list-style-type: none"> • If a negative impact is identified for any area of rights <u>or</u> any group of children and young people, what options are there to modify the proposed decision to mitigate the impact? • Could any positive impacts be enhanced? <p>There are no negative impacts anticipated. This work removes a discriminatory status that is out of step with modern family units and confers few tangible rights within modern legislation.</p> <p>The positive impacts could potentially be enhanced by widening the abolition of illegitimacy to cover the succession of manorial rights and hereditary titles. However, this would require a disproportionate amount of research and policy development to prevent any unintended consequences for individual families. A decision was taken to follow the model contained in the Family Law (Scotland) Act 2006, which retains some saving provisions around hereditary titles and customary provision. Regulation making powers have been included in the Draft Legitimacy Law to enable the States Assembly to amend the Law by Regulation in the future.</p>		
<p>10) Conclusions</p> <p>In summary, what are your key findings on the impact of the proposed decision on the rights of Jersey children?</p> <p>The status of illegitimacy is out of step with modern family structures as recognised in legislation, particularly same-sex parents who will be recognised by the 2024 Law. The status of illegitimacy amounts to an arbitrary and pejorative distinction in law, which is without purpose or meaningful relevance. There is little purpose of retaining the status in legislation. Legitimacy cases are rarely heard by the Court. Furthermore, the status has discriminatory social associations, which are applied to children based solely on their parents' marital status. Children should not be discriminated against in this manner. The removal of this status will come into force alongside the improved rights conferred within the 2024 Law. The Draft Legitimacy Law is key to allowing the 2024 Law to be brought into force in an equitable manner, so that no children are labelled as illegitimate.</p>		