

STATES OF JERSEY



ASSISTED DYING (P.18/2024) – CHILDREN’S RIGHTS IMPACT ASSESSMENT

Presented to the States on 22nd March 2024
by the Council of Ministers

STATES GREFFE

CHILDREN'S RIGHTS IMPACT ASSESSMENT (CRIA)

PART 1: SCREENING

Name and title of Duty Bearer:	Council of Ministers
Type of Duty Bearer: (Minister, Elected Member or States Assembly Body)	Ministerial
Assessment completed by (if not completed by duty bearer):	Policy Principal, Cabinet Office
Date:	14.03.24

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?

The decision: The decision of the States Assembly to adopt the Report and Proposition which sets out detailed proposals for the development of a draft assisted dying law.

Background: The Report and Proposition is brought forward in accordance with a decision of the States Assembly (P95/2021) that, in principle, assisted dying should be permitted in Jersey, but that, prior to the preparation of the law drafting instructions, detailed proposals should be brought back to the Assembly for debate. The Report and Proposition sets out those detailed proposals.

What is the problem or issue the decision is trying to address?

The decision will confirm the arrangements for assisted dying in Jersey, including all processes and safeguards, ahead of law drafting.

Do children experience this problem differently from adults?

The Report and Proposition set out that assisted dying would be permitted only for those aged 18 or over – i.e. children would not be eligible for assisted dying whereas adults, who meet the assisted dying eligibility criteria, would be.

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

All children have the potential to be affected if assisted dying is permitted in Jersey.

Children with a terminal illness or who are experiencing unbearable suffering as a result of their physical medical condition, may be **directly** affected in that they would not be eligible for assisted dying (whereas adults with the same or similar conditions may be eligible).

<p>All children have the potential to be impacted <i>indirectly</i> in that the parents, carers or other family members of <u>any child</u> have the potential to request assisted dying.</p>
<p>3) What is the likely impact of the proposed decision on children and on their rights?</p> <ul style="list-style-type: none"> • 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?
<p>All children may be impacted <i>indirectly</i> if a parent, carer or other family member were to have an assisted death.</p> <p>Children with a terminal illness or who are experiencing unbearable suffering as a result of their physical medical condition, may be <i>directly</i> affected in terms of the rights of disabled children and where this differs from the rights of disabled adults.</p>
<p>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</p>
<p>A full CRIA is required in relation to the potential <u>direct impact</u> on children’s rights – specifically because, should the proposition be adopted, a child will not be eligible for assisted dying.</p> <p>A full CRIA related to the potential <u>indirect impact</u> on children’s rights (i.e. impact on children of parents/carers having an assisted death) cannot be meaningfully undertaken until the States Assembly has confirmed the proposals. This is because there will be significant variations as to the extent of the <u>indirect impact</u> depending on whether the Assembly adopt proposals related to:</p> <ul style="list-style-type: none"> • ‘Route 1 – terminal illness’ only; or • ‘Route 1 – terminal illness’ and ‘Route 2 – unbearable suffering’. <p>The indirect impact on children’s rights (for example, Article 16 - Right to Privacy, including family and home life) will differ where a parent/carer is assessed as eligible under ‘Route 1 – terminal illness’, as opposed to under ‘Route 2 – unbearable suffering’. Under Route 1, the parent/carer will already be nearing the end of their life at the point of their assisted death, in contrast to ‘Route 2 – unbearable suffering’ where the parent or carer’s life may potentially be shortened by a number of years. The potential impact on the child will be different in both cases.</p> <p>It is, therefore, anticipated that a CRIA on the <u>indirect impact</u> on children’s rights regarding their parent/carer’s assisted death will be undertaken at the point at which a draft law has been prepared, prior to debate by the States Assembly. The full CRIA below relates exclusively to the potential direct impacts on children associated with the proposed decision that they should not be eligible for assisted dying.</p>

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 type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>
	Respect for the child’s views (Art 12)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Civil Rights & Freedoms	Right to birth registration, name and nationality (Art 7)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Right to an identity (Art 8)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Freedom of expression (Art 13)	<input type="checkbox"/>	<input checked="" 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 checked="" 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 checked="" type="checkbox"/>
	Right to Privacy (Art 16) including family and home life	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
	Protection against torture or other cruel, degrading or inhumane treatment or punishment (Art 37(a))	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
	Responsibilities of both parents in the upbringing and development of their child (Art 18)	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
	Family reunification (Art 10)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Abduction and non-return of children abroad (Art 11)	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
	Special protection for children unable to live with their family (Art 20)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Best interests of the child in the context of Adoption (Art 21)	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
	Protection from violence, abuse or neglect (Art 19)	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
Basic Health and Welfare	Rights of disabled children (Art 23)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Right to health and health services (Art 24)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Right to social security (Art 26)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Right to adequate standard of living (Art 27)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Education, Leisure and Cultural Activities	Right to education (Art 28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Goals of education (Art 29) Education must develop every child's personality, talents and abilities to the full	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
Special Protection Measures	Special protection for refugee children (Art 22)	<input type="checkbox"/>	<input checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" type="checkbox"/>
Child labour and right to be protected from economic exploitation (Art 32)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Drug abuse (Art 33)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual exploitation (Art 34)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Abduction, sale and trafficking of children (Art 35)	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>
Children belonging to a minority or an indigenous group (Art 30)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Optional Protocol on the sale of children, child prostitution and child pornography	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Optional protocol on the involvement of children in armed conflict	<input type="checkbox"/>	<input checked="" 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?
<p>Evidence collected focusses on the issue of whether or not children should be eligible for assisted dying in Jersey.</p> <p>The majority of jurisdictions that permit assisted dying <u>do not</u> permit it for people aged under 18, including:</p> <ul style="list-style-type: none"> • All US states that permit assisted dying • Canada • All Australian states • New Zealand • Spain • Luxembourg • Austria <p>Assisted dying is only permitted for those aged under 18 in the Netherlands and Belgium, and in both jurisdictions it is only permitted in certain circumstances.</p>		

<p>Phase 1 consultation: Assisted Dying in Jersey, Public engagement summary report</p> <p>Public engagement summary report on assisted dying in Jersey (gov.je)</p>	<p>The Phase 1 consultation did not identify a clear consensus as to whether children under 18 years old should be permitted an assisted death.</p> <p>Some participants expressed the view that those aged under 18 may not have the maturity to make such a decision. Others felt children and young people should not be denied an option afforded to adults.</p> <p>A number who engaged in the consultation expressed a preference to legislate for adults aged over 18 years only, and potentially reconsider amendments to eligibility criteria in future.</p>	<p>The Phase 1 consultation was a qualitative study to explore key themes and concerns of Islanders relating to the introduction of assisted dying and did not include quantitative evidence, such as survey work.</p>
<p>Phase 2 consultation: Assisted Dying in Jersey Consultation Feedback report</p> <p>Assisted Dying in Jersey Phase 2 Consultation Feedback Report (gov.je) (p.48)</p>	<p>The Phase 2 survey responses indicate a mixed view towards the ‘18+’ eligibility criteria. The consultation survey asked: ‘Do you agree that assisted dying should only be permitted for people aged 18 or over?’</p> <p>To which 40% responded ‘Yes, I agree’ and 35% responded ‘No, I do not agree’.</p> <p>The most commonly cited reason restricting assisted dying to those aged 18 or over, was the view that only people aged 18 and over have the sufficient maturity and legal capacity to consent to assisted dying.</p>	<p>The consultation feedback considered the views of those who responded to it. By its nature, consultation work captures the views of those who have an interest in assisted dying. It must not be assumed that their individual or collective views are necessarily representative of wider public opinion.</p>

	<p>Those who did not agree that assisted dying should be restricted to those aged 18+, broadly cited two key reasons, they either held the view that:</p> <ul style="list-style-type: none"> • people of any age can experience pain and suffering and most young people (15-16 years old) are capable of consent and can make informed decisions [Some respondents stated that assisted dying should be offered to children and young people as long as there was parental consent.] <p>OR</p> <ul style="list-style-type: none"> • did not support for assisted dying for any person of any age 	
<p>Assisted Dying in Jersey Ethical Review</p> <p>Assisted Dying in Jersey Ethical Review Report (gov.je)</p>	<p>The review authors noted:</p> <p><i>“There are arguments for and against allowing competent minors to access AD (assisted dying).</i></p> <p><i>In favour of allowing such access: there are precedents for doing so; it may be fair, just and equitable to afford competent minors the same rights as adults in their situations enjoy; it may be legally consistent to do so; and safeguards may be introduced by additionally requiring parental consent.</i></p>	<p>The Ethical Review was undertaken by three ethicists who each hold a different position on assisted dying.</p>

	<p><i>However, most jurisdictions do not allow minors to receive AD and those countries that do have low uptake and their laws are controversial. Furthermore, children may be said to lack the requisite autonomy and may be more in need of protection. Offering them access to AD may also create legal inconsistency (unless children were also to be given a right to refuse life-sustaining treatment). We also note that the public consultation narrowly preferred restricting access to adults.</i></p> <p><i>On balance, we believe that AD should be restricted to adults.”</i></p>	
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<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?
<p>Government of Jersey officers and the previous Minister for Home Affairs corresponded with the Children’s Commissioner to establish her views on the consulting with children about assisted dying.</p> <p>The Commissioner provided formal advice expressing concerns about engaging young people in a conversation about assisted dying because, by its very nature, it could be a potentially distressing topic. The Commissioner stated that children may not be able to fully comprehend or examine the consequences of assisted dying, and that the principle of engaging with children and young people about policy matters that impact them, and the benefits that derived from engagement were, in this case, outweighed by the risks.</p> <p>In light of this, it was proposed that an alternative route would be to engage with young adults (i.e. aged 18-24) and parents.</p> <p>The Phase 1 and Phase 2 consultation and engagement included young adults and parents (demographic data, however, cannot be broken down by age or whether the participants had children); the findings of which are summarised in section 6 above.</p>		

<p>There are very few examples of engagement with children on the issue of assisted dying in other jurisdictions where legislation has been introduced.</p> <p>However, one qualitative study in Canada was published in <i>Children and Society: The international Journal of Childhood and Children's Services</i> in 2023: <i>Young people's perspectives on assisted dying and its potential inclusion of minors</i></p>	<p>Only 3 of the 22 participants in the Canadian study were children aged 16 or 17, the majority were young adults aged 18-24.</p>	<p>The study highlighted the importance and benefits of involving young people (as distinct from children >18) in the debate around assisted dying and the possible inclusion of assisted dying for those aged under 18.</p>
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<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>		
<p>Relevant UNCRC Articles (rights) identified in Q5</p>	<p>Describe the positive or negative impacts on these rights</p>	<p>Which group(s) of children are likely to be affected?</p>
<p>Best interests of the Child (Art 3) to be a top priority</p>	<p>A decision not to permit children to have an assisted death impacts on Article 3 in multiple ways:</p> <ul style="list-style-type: none"> • it may not be in best interests of an individual child who is suffering (and who is competent to make an assisted dying decision) to deny that child access to an assisted death. This could be perceived as a negative impact on the Article 3 rights • it may be in the in best interests of an individual child who may not be competent to make an assisted 	<p>All children, particularly children with a terminal illness or who are experiencing unbearable suffering as a result of their physical medical condition.</p>

	<p>dying decision to deny that child access to an assisted death. This could be perceived as a positive impact on the Article 3 rights</p> <ul style="list-style-type: none"> • it may or may not be in the best interests of a child to deny them access to an assisted death if their wish for an assisted death brings them into conflict with their parents' wishes. This could be argued as either a positive or negative impact • it would be in the best interests of a child to deny them access to an assisted death if their stated wish for an assisted death was driven by their parents. This could be perceived as a positive impact on the Article 3 rights 	
<p>Right to Life survival and development (Art 6)</p>	<p>A decision to not permit children to have an assisted death would have negatively impact on a child's right to life survival and development, as a child would not be eligible for an assisted death</p>	<p>All children, particularly children with a terminal illness or who are experiencing unbearable suffering as a result of their physical medical condition.</p>
<p>Respect for the child's views (Art 12)</p>	<p>A decision not to permit children to have an assisted death may have a negative impact on 'competent minors' who are aged under 18 but may have the maturity and capacity to make decisions around their health and care, and</p>	<p>All children, particularly children with a terminal illness or who are experiencing unbearable suffering as a result of their physical medical condition.</p>

	<p>potentially their wish for assisted dying. In this instance, they would not be able to express their views in the context of requesting assisted dying.</p> <p>Where a child does not have the competence or capacity to make a decision about assisted dying, the decision not to permit them access to assisted dying has no effect on their rights.</p>	
<p>Rights of disabled children (Art 23)</p>	<p>A potential negative impact of the decision not to permit children to have an assisted death, is that disabled children would be treated differently to disabled adults, who would potentially be eligible for an assisted death.</p> <p>A decision not to permit any children to have an assisted death would mean treating disabled children in the same way as all other children, protecting them from making a decision that they may not have the competency or capacity to make or to understand the full consequences of.</p>	<p>Children with a terminal illness or who are experiencing unbearable suffering as a result of their physical medical condition.</p>
<p>Right to health and health services (Art 24)</p>	<p>A decision not to permit children to have an assisted death would mean that children were not eligible to access all the services of the Government of Jersey's Assisted Dying Service. They could not access an</p>	<p>All children, particularly children with a terminal illness or who are experiencing unbearable suffering as a result of their physical medical condition.</p>

	<p>assisted death (unlike adults), but allowing access to the Assisted Dying Service's counselling and bereavement support services could represent a positive impact on their Article 24 rights.</p>	
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- 9) Weighing positive and negative impacts
- If a negative impact is identified for any area of rights or 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?

The negative direct impact on children's rights relate to the fact that, under these proposals, a child would not be able to request assisted dying or make a decision to have an assisted death. They may, therefore, be subject to suffering as a result of a physical medical condition which an adult could have the potential to end, if the adult had an assisted death.

These negative impacts are accepted in bringing forward proposals that only allow assisted dying for those aged 18 or over, on the basis that:

- a. it is appropriate for the States Assembly to exclude children from assisted dying legislation in order to ensure that all children are protected because, as set out in the preamble to the UNCRC *"the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth"*
- b. Jersey law already restricts children's access to certain activities / services (e.g. Marriage, smoking, consuming alcohol, working hours) on the basis potential harm and excluding children from access to assisted dying represents a consistent approach to such important issues.

It should be noted that this view is held in most other jurisdictions where assisted dying is permitted.

10) Conclusions
 In summary, what are your key findings on the impact of the proposed decision on the rights of Jersey children?

It is essential that any law which permits assisted dying works to safeguard all people (ie. those requesting an assisted death and wider society). This is even more important when considering under 18s who, by reason of potential immaturity, require special safeguards.

- Extensive consultation and engagement with Islanders, which included young adults and parents, did not identify strong consensus on whether assisted dying should be permitted for under 18s
- Research of other jurisdictions where assisted dying is permitted (which have all ratified the UNCRC, excluding the American States) indicates a broad acceptance that assisted dying should not be permitted for under 18s in order to ensure children are fully protected – although this position is not universal given that Netherlands and Belgium, who have also ratified the UNCRC, permit for under 18s
- Not permitting assisted dying for under 18s has both positive and negative impacts on children’s rights. In weighting up those impacts, it must be noted that not permitting children to access assisted dying ensures that there is no conflict with Article 6 – the Right to life, survival and development.

Therefore, the proposals take a cautious approach and accord with the ‘in principle’ decision of P95/2021 to only permit assisted dying for adults.