

STATES OF JERSEY



Jersey

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

PAGE 21, ARTICLE 6 –

- (1) In paragraph (6) for “The Minister may, by Order,” substitute –
“The States may, by Regulations,”.
- (2) Delete paragraph (7) and renumber the subsequent paragraphs and cross-references accordingly.

PAGE 27, ARTICLE 14 –

- (1) In the heading, after “Orders”, insert “and Regulations”.
- (2) In the text, after “Order”, insert “or Regulations”.

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”) and agreed to bring forward 3 amendments to the legislation. This amendment focuses on Article 6(6) which states that the Minister may, by Order, amend Schedule 2 of the draft Law which outlines the exempt decisions for which a Children’s Rights Impact Assessment (CRIA) need not be undertaken.

Within Schedule 2 of the draft Law, a number of exemptions are set out for propositions that do not require a CRIA to be undertaken. As drafted, the draft Law provides for the Minister for Children and Education to amend this list by Order. It is noted that the exemptions relate to specific types of propositions as set out in Standing Orders and it is unlikely that any further types of propositions would require justification to be included given the scope of the draft Law. The Panel notes that Article 6(6) as drafted, places a significant amount of power in the hands of the Minister for Children and Education in relation to amending the exemptions within this list. The Panel questioned the Minister in writing as to why this approach had been taken and was provided with the following response:

“It was considered that the requirement for the Minister to consult these duty-bearers ahead of any amendment to the Schedule of Exempt decisions, will ensure that the Minister is fully appraised of the views of Members with respect to potential changes to the scope of the requirement on them to prepare and publish CRIs.

In the event that a Member of the States wished to propose the annulment of such an Order made by the Minister, they would be able to do so under Article 11 of the Legislation (Jersey) Law 2021.”¹

Whilst the Panel is aware that it is possible for a States Member to bring a proposition in order to annul an Order made by a Minister, it is concerned that the level of power to amend these exemptions is not in keeping with best practice in terms of accountability and decision making. If an exemption is required, then the Minister should be able to fully justify the reason for the exemption being added to the Schedule to the States Assembly. Whilst Article 6(7) provides that the Minister must consult with Article 6 duty bearers (e.g., Ministers, elected members and Assembly body duty bearers) prior to making such an Order, the Panel would suggest that the current approach creates a risk whereby a future Minister could amend the exemptions to include any type of proposition regardless of the outcome of this consultation (it is important to note that Article 6 duty bearers do not include public authority duty bearers). Whilst this issue could be addressed by a proposition seeking to annul an Order, the risk still remains.

As such, the Panel has agreed that in order to ensure full accountability, any changes to the exemptions set out in Schedule 2 must be made through draft Regulations which would need to be approved by the States Assembly.

A consequential amendment required as a result of this amendment will be that Article 6(7) is deleted. Article 6(7) as drafted requires the Minister to consult with Article 6 duty bearers prior to making an Order to amend Schedule 2. As the Panel’s amendment requires that any changes should be brought forward by Regulations, the

¹ Questions – Minister for Children and Education

Article 6 duty bearers would be consulted in relation to the changes through the lodging and subsequent debate in the States Assembly of any proposed changes by Regulations. The Panel believes that this is a constructive amendment to the draft Law that will help to improve accountability and ultimately future proof safeguards in relation to the exemptions that can be made under Schedule 2.

Financial and manpower implications

The requirement to produce additional legislation in the form of Regulations for approval by the States Assembly will impact the Legislative Drafting Office and relevant policy officers in respect of preparing the accompanying reports. It is, however, expected that this would be met from within existing resources.