

STATES OF JERSEY



DRAFT CHILDREN AND CIVIL STATUS (CONSEQUENTIAL AMENDMENTS) (JERSEY) REGULATIONS 202- (P.89/2024) – CHILDREN’S RIGHTS IMPACT ASSESSMENT

**Presented to the States on 23rd December 2024
by the Minister for Children and Families**

STATES GREFFE

CHILDREN'S RIGHTS IMPACT ASSESSMENT (CRIA)

PART 1: SCREENING

Name and title of Duty Bearer:	Minister for Children and Families
Type of Duty Bearer: (Minister, Elected Member or States Assembly Body)	Minister
Assessment completed by (if not completed by duty bearer):	Policy Officer
Date:	23.12.2024

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 Children and Civil Status (Consequential Amendments) (Jersey) Regulations 200-

On the 19th March 2024, the States Assembly voted through P.104/2023, the Children and Civil Status (Amendments) Jersey Law 2024 ("the Amendment Law"). This law, based on provisions contained in the Human Fertilisation and Embryology Act 2008, will establish new routes for parents to acquire legal parent status and parental responsibility for their children. This will establish greater equality for children whose parents are in a same-sex couple, use fertility treatment or a surrogate mother, or who are in a civil partnership. In particular, the new statuses of second female parent and parent via parental order will be established. This means that all children, as far as possible, will be treated in the same manner in relation to their parents. However, due to differences between same-sex female and male couples, in the way that children are conceived and enter the lives of couples, different provisions of the Law are required to suit these different circumstances. The Amendment Law will help embed equal rights for the children of all families, building on the legislation brought in to establish civil partnerships and same-sex marriage. It updates legislation, recognising modern family units and the different ways to become a parent. It improves rights, where there are currently obstacles and additional processes for parents trying to gain legal parent status and parental responsibility for their own children.

The implementation of the Amendment Law has been a complex and lengthy process. During the time taken to develop the law, same-sex couples have not been able to equitably obtain legal parental status and responsibility in the same manner as other parents. The ability to retrospectively re-register births with the second parent on their child's birth certificate will help remedy this current position. The court will also be able to grant recognition orders for parents who have already had parental orders granted by the courts in England and Wales.

The Draft Children and Civil Status (Consequential Amendments) (Jersey) Regulations 200- ("the Consequential Amendments"), will allow the Amendment Law to be brought fully into force by enacting the policy intentions of that Law across the whole statute. It makes amendments across multiple pieces of legislation,

<p>equalising the role of second parents and parents via parental order with all other parents. Parents via new routes established in the Amendment Law will be treated, as far as achievable possible, in the same manner as all other parents in relation to their children.</p> <p>The Amendment Law and accompanying Consequential Amendments are fundamentally concerned with progressing children’s rights. It upholds Jersey’s responsibility, under Article 4 of the United Nations Convention on the Rights of the Child (“the UNCRC”), to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present convention”. By enabling Jersey’s Law to fully recognise every child’s parents and providing for all children’s parents to be able to obtain parental responsibility, Jersey is taking a step towards further upholding the Articles of the UNCRC.</p>
<p>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</p>
<p>In particular, the Consequential Amendments will provide additional rights to the children of same-sex parents and parents who use fertility treatment or a surrogate mother. However, the Amendment Law will potentially impact upon any child born in Jersey or whose parents live in the island. There are wider benefits to all children when their peers are granted equal rights regardless of their parents.</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>The Amendment Law and Consequential Amendments are fundamentally concerned with progressing children’s rights, there are no direct or indirect negative impacts identified. It allows full recognition of the make-up of modern families, as provided for in marriage and civil partnership legislation.</p> <p>The Amendment Law and Consequential Amendments help Jersey to better comply with the UNCRC. If approved, the proposed legislation will allow the positive changes voted through in the Amendment Law to be fully enacted across all legislation. The Amendment Law will improve the recognition of the child’s parents and their ability to acquire legal parental status and parental responsibility in a more equitable manner. It will improve the rights of all children to have their parents recognised by registration on their birth certificate or via parental order. The Consequential Amendments positively engage Article 18 of the UNCRC, that State Parties shall use best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. It also positively engages Article 7 by allowing the child to be registered immediately after birth with a name and the right to know and be cared for by their parents. This will substantially improve the rights of children whose parents are in a same-sex couple, or who use a surrogate or fertility treatment to conceive. This will have an indirect positive impact on all children, through the improved equality and recognition of their peers’ parents.</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
Yes, due to the number of UNCRC rights that are engaged and the impact of the Amendment Law and Consequential Amendments upon children born in Jersey and children whose parents live in Jersey.

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)	x	<input type="checkbox"/>
	Responsibilities of both parents in the upbringing and development of their child (Art 18)	x	<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?
Policy intentions and impact of the Amendment Law: • Draft Children and Civil Status	The overall positive impact of, and urgent requirement for, the new legislation, especially for same-sex couples.	There are some outstanding issues regarding the registration of children as either legitimate or

<p>(Amendments) (Jersey) Law 202-</p> <ul style="list-style-type: none"> • Submissions to the ‘Review of the Draft Children and Civil Status (Amendments) (Jersey) Law’ • S.R.2-2024 Scrutiny Report - Review of the Children and Civil Status (Amendments) (Jersey) Law 202- 13th March 2024 [CEHA].pdf • S.R.2-2024 Res.pdf • Letter - Minister for Children and Education to CEHA Re Children and Civil Status Law - 14th February 2024.pdf 		<p>illegitimate. A review has been commenced to consider the implications of removing the status of legitimacy from legislation. Furthermore, a watching brief is being kept on policy and legislative developments related to surrogacy.</p>
<p>Extensive search of relevant legislation requiring consequential amendment on Jersey Law Home and guidance on appropriate amendments from the Law Officers’ Department.</p>	<p>Multiple amendments were identified to allow the policy intentions of the Amendment Law to be fully enacted throughout Jersey legislation.</p>	<p>There may be some very limited areas of extended UK legislation, reciprocal agreements for Social Security purposes or unidentified provisions that have not been captured. The impact of these will be limited.</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>		
<p>Groups consulted</p>	<p>How they were involved</p>	<p>What were the findings?</p>
<p>Various groups including Children’s Social Services, Same Sex Parents Group, Bailiff and Deputy Bailiff, Jersey Community Relations Trust, Jersey Family Law Society, the Superintendent Registrar, and Liberate Jersey were consulted as part of the policy development process for the</p>	<p>Discussion meetings and provided with copies of the draft Amendment Law to review.</p>	<p>Supportive of the approach and provisions of the Amendment Law.</p>

<p>Amendment Law. The Consequential Amendments help to implement these original policy intentions.</p> <p>Further consultation on the operational impact of the Amendment Law and Consequential Amendments has been conducted with the Superintendent Registrar and Assisted Reproductive Unit.</p> <p>A copy of the draft Consequential Amendments has been provided to the CEHA Scrutiny Panel.</p>		
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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)?

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?
<p>Article 2 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms</p>	<p>Article 2 requires that children are not discriminated against because of their family background. It is arguable that Jersey’s treatment of same-sex parents prior to the Amendment Law amounted to discrimination due to the lack of access to legal parent status or parental responsibility in the same ways open to opposite-sex couples.</p>	<p>All children born in Jersey or whose parents live in Jersey</p>

<p>of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.</p>		
<p>Article 3</p> <ul style="list-style-type: none"> • 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 	<p>The Amendment Law provides the Court with the power to make a parental order, these must be made in the best interests of the child. The Consequential Amendments fully realise the rights of children who have parents via parental order by equalising their position to match other parents, as far as possible, throughout all legislation.</p>	<p>All children born in Jersey or whose parents live in Jersey</p>
<p>Article 4</p> <p>States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.</p>	<p>The Amendment Law and Consequential Amendments are an example of a State Party undertaking legislative measures to further implement the rights recognized in the present Convention. These Consequential Amendments fully realise these rights throughout Jersey legislation.</p>	<p>All children born in Jersey or whose parents live in Jersey</p>
<p>Article 5</p> <p>States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or</p>	<p>To enable a State Party to respect the responsibilities, rights, and duties of all parents, that State Party must possess statute that fully provides those responsibilities, rights, and duties. The</p>	<p>All children born in Jersey or whose parents live in Jersey</p>

<p>other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.</p>	<p>Amendment Law and Consequential Amendments expand the acquisition of parental responsibilities, rights, and duties to civil partners, same-sex, and some opposite-sex couples using fertility treatment.</p>	
<p>Article 7 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.</p>	<p>The Amendment Law and Consequential Amendments will provide legislative mechanisms for children with same-sex parents or opposite-sex parents who have used donor sperm to have both their parents registered on Register of Births. Until the commencement of the Amendment Law, acquisition of legal parent status is not possible for these parents via registration on their child's birth certificate. In these circumstances, Article 7 is infringed upon by the Marriage and Civil Status (Jersey) Law 2001, as one parent is denied from acquiring legal parent status for their child via Registration. In particular, the Consequential Amendments allow for the rights of the second parent to be equal in law to that of other parents. The Consequential Amendments fully embed the intention of the Amendment Law throughout legislation. The Amendment Law will expand who can be deemed to be a child's legal parents, so that both parents in a same-sex</p>	<p>All children born in Jersey or whose parents live in Jersey</p>

	<p>couple can be a child's legal parents for the first time.</p> <p>The Amendment Law also removes the customary law presumption that the husband of the birth mother is the child's father, which may not always be the case and has proven problematic in the past.</p>	
<p>Article 8 Every child has the right to an identity. Governments must respect and protect that right, and prevent the child's name, nationality or family relationships from being changed unlawfully.</p>	<p>Family relationships are a key part of a child's identity, it is important that Jersey Law facilitates the acquisition of the legal statuses that underpin these family relationships for all children. The Amendment Law and Consequential Amendments allow for the recognition of modern family units, so that all children may have both their parents legally recognised.</p>	<p>All children born in Jersey or whose parents live in Jersey.</p>
<p>Article 18 Both parents share responsibility for bringing up their child and should always consider what is best for the child.</p>	<p>Until the Amendment Law and Consequential Amendment are fully enacted, it is not possible for both same-sex parents, and, in certain circumstances both opposite-sex parents who use fertility treatment, to acquire legal parent status via registration on their child's birth certificate. Furthermore, there is legal uncertainty for parents in Jersey who have been granted parental orders by courts in England and Wales. In certain circumstances, this might lead to uncertainty for parents to share the full</p>	<p>All children born in Jersey or whose parents live in Jersey.</p>

	<p>responsibility for making important decisions concerning the upbringing of their child. The Amendment Law and Consequential Amendments will allow both parents in these circumstances to have legal recognition, and there both share responsibility for bringing up their child.</p>	
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<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>The Amendment Law and Consequential Amendments upholds all of the rights identified above.</p> <p>The Amendment Law and Consequential Amendments do not amend the current position within the Legitimacy (Jersey) Law 1973, in which only children born into a mixed-sexed marriage are classed as legitimate. This is outmoded and unequitable. A review is ongoing to consider the legal implications of legitimacy, and the policy objective is to abolish the status of illegitimacy once these implications are more firmly understood. This would enhance the positive impact of new routes to parenthood recognised by the Amendment Law.</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 Amendment Law and Consequential Amendments upholds all of the rights identified above.</p> <p>The Amendment Law and Consequential Amendments do not amend the current position within the Legitimacy (Jersey) Law 1973, in which only children born into a mixed-sexed marriage are classed as legitimate. This is outmoded and unequitable. A review is ongoing to consider the legal implications of legitimacy, and the policy objective is to abolish the status of illegitimacy once these implications are more firmly understood. This would enhance the positive impact of new routes to parenthood recognised by the Amendment Law.</p>