

STATES OF JERSEY



CHILDREN (JERSEY) LAW 2002: APPOINTMENT OF CHILDREN'S GUARDIANS AND ADVOCATES IN CERTAIN COURT PROCEEDINGS (P.137/2010) – COMMENTS

**Presented to the States on 1st November 2010
by the Council of Ministers**

STATES GREFFE

COMMENTS

Deputy Hill of St. Martin proposes that the Children (Jersey) Law 2002 is amended so that where children may be – (i) separated from their parents by virtue of a care order; or (ii) confined by virtue of a secure accommodation order, a children’s Guardian and an Advocate for the child will be appointed by the Court in all cases.

The Council of Ministers, in consultation with the Children’s Policy Group, opposes this proposition for the following reasons:

There is no legal requirement to change the Children (Jersey) Law 2002; and the policy reasons as outlined in the proposition are not sufficiently compelling. The recent *Re B* judgement referred to in the proposition simply clarifies the existing position by making it clear that the Court does not automatically have to appoint Guardians and lawyers but can exercise its discretion to do so when deemed appropriate.

The Court is routinely asked to exercise its discretion in all sorts of different proceedings. Confidence in the Court’s ability to exercise this discretion is fundamental to our legal system. If any party is concerned about the Court’s decision, there is a right of appeal.

- (i) The Council of Ministers does not accept the contention that the Court’s ability to exercise discretion is in contravention of the Human Rights (Jersey) Law 2000 or that it would in any way prevent Jersey from seeking an extension of the UK ratification of the United Nations Convention on the Rights of the Child (UNCRC). Other jurisdictions with similar discretionary powers are already signatories to the UNCRC.
- (ii) The proposition appears to be based on the notion that a child might not be properly represented, rather than on any evidence that this had happened or is likely to happen. It is believed that any likelihood will be further reduced by the establishment of the new Jersey Family Court Advisory Service (JFCAS) to be launched in November. This service, which will be managed by the Probation and After Care Service Board to ensure independence from Social Services, will appoint locally-based Guardians whose role is to protect the interests of the child. Guardians will be familiar with, and knowledgeable about, Jersey’s legislative and administrative processes. It might therefore not always be necessary to appoint a lawyer, but this is a discretion which is vested in the Court by virtue of Article 75 of the Children (Jersey) Law 2002.

The Children’s Policy Group (CPG), which was established in part to uphold the aspirations of the UNCRC and ensure that “*the best interests of the child shall be the primary consideration*”, believes that these interests will be better served by supporting the new JFCAS to operate across public as well as private law applications, rather than by changing existing legislation when there is no evidence that that legislation has resulted in any disadvantage to any child or young person.

The Council of Ministers fully supports the CPG’s position and therefore opposes this proposition.

Financial and manpower implications

The Deputy states that there would be no additional financial or manpower implications associated with this proposition based on the fact that the Courts already appoint Guardians and lawyers. Even if this assumption is correct, it does not account for the administrative costs associated with changing the law.

The Council of Ministers recognised that additional resources may be required to enable JFCAS to operate across private and public law applications, but that these costs, which are currently being established under a CSR working party, are minimal compared to the significant savings to be made by the appointment of Guardians from a local Panel rather than from England.