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BY EMAIL

30 May 2025

Dear Chair,

Follow-up matters from the public hearing: What protection do children in Jersey have from online harms?

Thank you for your letter of 20th May in which you ask a number of questions following our Public Hearing of the 16th May. We have set out answers to each of your questions below in turn:

1. As a small jurisdiction, what is the benefit of creating standalone legislation relating to online harms?

Legislating locally is especially important for a small jurisdiction, to ensure that laws are appropriate and proportionate and that relevant enforcement bodies are on the island, responsible to Islanders. We firmly believe that Jersey should not outsource its ability to legislate, oversee or scrutinise the laws which impact Islanders.

If we had adopted a permissive extent clause for the UK Online Safety Act 2023, the law would be enforced by the UK's Office of Communications (Ofcom) which has a remit that extends to enforcing UK regulatory standards for broadcasters and internet providers. No authority in Jersey would have oversight over Ofcom, or could require Ofcom to enforce a matter on behalf of an Islander. We would also be unable to amend the Act to suit local needs and would be unable to adopt best practice from jurisdictions other than the UK in seeking an approach to online harms that would best suit our own jurisdiction.

a. Could alignment with legislation in other jurisdictions be beneficial?

Indeed, it makes sense to align with reputable jurisdictions when it comes to drafting laws. We often draft our legislation based on best practices from around the world, build them with a similar methodology or very similar content, but try to make it proportionate for Jersey.

This approach can facilitate compliance for companies and cross-border enforcement for our authorities.

However, aligning with legislation is not the same as simply extending foreign legislation to Jersey, which raises concerns of sovereignty, proportionality and enforceability for the reasons mentioned above.

2. *In your letter to the Panel on 31st March 2025, you highlighted that “we have criminal laws in place that determine which material is forbidden to be viewed online”. Can you clarify which specific laws you were referring to?*

The most relevant laws in this context are the Protection of Children (Jersey) Law 1994 and the Sexual Offences (Jersey) Law 2018.

Besides this, the Telecommunications (Jersey) Law 2022 stipulates several offences for improper use of telecommunication systems, including sending a message or matter that is grossly offensive or of an indecent, obscene or menacing character.

The offences outlined under these laws have been prosecuted, at times, with reference to online material accessed by perpetrators.

a. In your opinion, are these sufficient?

The Protection of Children (Jersey) Law 1994 and the Sexual Offences (Jersey) Law 2018 are within the Ministerial remit of the Minister for Justice and Home Affairs whose Ministry also is responsible for the enforcement of the above mentioned provisions of the Telecommunications (Jersey) Law 2022.

All Ministers need to be mindful of their corporate parenting responsibilities and we constantly aim at improving our laws in this area.

With regard to legislation addressing online harms, the initiatives of the Department for the Economy and the Justice and Home Affairs Department are complementary. For Jersey criminal laws, amendments are being planned to better deal with offences in the digital environment, for example, threatening to share intimate images or online stalking. We understand that the Panel has met with the Minister for Justice and Home Affairs who oversees this work.

While criminal law is more focussed on identifying and addressing clearly illegal activities, this Ministry's responsibility is to identify and address areas of telecommunications, data protection and cybersecurity regulation that can help to make internet usage safer and protect citizens' rights. There are enforcement challenges where providers of internet platforms are not based in our own jurisdiction and also where the threshold for legal prosecution has not been passed or where the perpetrator remains anonymous. To some extent, the addressing of online harms is a global challenge, that needs to take into account local regulatory initiatives and enforceability of measures in external jurisdictions.

We nevertheless are seeking to expand the legal rights of Islanders in this context as well, bearing in mind online platforms often provide their services on terms that enable harmful content to be taken down. We are looking at amendments to give Islanders the right to an easily accessible and fast mechanism to request online platforms to remove harmful content that misuses personal data within 48 hours. We are closely working with the Jersey Office for the Information Commissioner (JOIC) as we develop this provision.

3. *In your letter to the Panel on 31st March 2025, you also highlighted the importance of freedom of expression. How should the right to access information be balanced with protection from harmful information or materials?*

As a liberal democracy, the freedom of expression and the freedom to access information are fundamental rights and they must remain fully ensured.

These fundamental rights must be balanced against the rights of children, as stipulated in the United Nations Convention on the Rights of the Child (the UNCRC), which was ratified by Jersey in 2014. Article 19 of that convention requires the protection from harms. At the same time, children also have the right to privacy and access to information as stated in Articles 16 and 17 of that convention.

The use of Virtual Private Networks (VPNs) and proxies present challenges to the easy identification of users.

We will continue to assess any proposed law against these fundamental rights and make sure that they are properly taken into consideration. We also will undertake a Children's Rights Impact Assessment and make sure the proposal is balanced.

Regulation of the manner in which parents give access to the internet is outside our Ministerial remit. However, the JOIC is involved in educating children on the need to protect their personal data and of their rights as data subjects and these activities are funded by the Department.

4. Can you describe how the Department for the Economy is considering the welfare of children as part of its work to progress protections from online harms?

As mentioned, we are looking at ways of further extending the data protection legislative framework to extend the rights of data subjects, including children, particularly for images uploaded to online platforms.

- a. To date, would you say that suitable considerations have been made by the Department of the Economy to consider children's wellbeing and rights as part of its work related to online harms protection?*

The matters mentioned above are suitable considerations for a jurisdiction the size of Jersey with a population that seeks access to the benefits provided by the internet by offshore providers. While the laws mentioned are universally applicable to all islanders, special attention has been given to the needs of children and they include specific rules where necessary. Additionally, the JOIC engages in valuable awareness-raising work among young Islanders to ensure they are aware of their rights and how they can remain safe online.

Furthermore, the Data Protection (Jersey) Law 2018 has strengthened the rights of young people, as it allows all islanders to withdraw previously given consent to the processing of personal data concerning them. That right is relevant, in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she previously gave consent while a child.

5. How will the Department for the Economy involve children and young people in shaping digital policies that affect them?

For any planned legislative changes, we continue to engage with key stakeholders, among them the Children's Commissioner for Jersey. Once a proposal becomes more concrete, we will put that proposal to public consultation in a child-friendly way to encourage the input of children.

We have also set up a cross-ministerial group for helping to shape legislation for online safety across government: this includes both the Minister for Children and Families and the Minister for Education and Lifelong Learning.

- a. *Do you see it as a responsibility for the Minister for Children and Families to ensure that views of young people are collected for Government?*

Addressing online harms is a shared responsibility of at least four Departments of Government, as is corporate parenting. The Minister for Children and Families plays a key role in engaging young people and making us aware of their main interests and concerns.

6. *Minister, are you aware of the concept of “digital safety by design” in relation to online safety and, in your opinion, should the Government of Jersey incorporate “digital safety by design” into policy making?*

The United Nations Convention on the Rights of the Child was ratified by Jersey in 2014 and guarantees a range of rights for children that apply equally in the digital environment. These include the non-discriminatory access to information, right to privacy, freedom of expression, etc. In 2024, the OECD published a report¹ suggesting 8 key components for digital safety by design for children. These are

- Employing age assurance mechanisms
- Implementing child-centred design
- Detecting and preventing harm: Digital service providers can proactively identify and mitigate risks by implementing technical safety measures, such as advanced detection systems, default settings, content filters, and real-time monitoring tools.
- Protecting children's privacy and personal data
- Ensuring child-friendly information provision
- Facilitating complaints and redress
- Encouraging child participation and putting children at the centre of decision-making
- Promoting a culture of safety and well-being

The digital safety by design concept is a renowned concept for compliance architecture used by respectable companies and developers. While it could help to inform the corporate parenting aspects of policy making, its added value and manner of application would require consideration too.

7. *As part of the online harms protection work, are any further legislative changes being considered to address addictive behaviours that relate to use of the digital media (including social media)?*

Algorithms are being used by online platforms to provide users with content that they are interested in. Algorithms are a massive problem from a misinformation perspective and from an echo chamber perspective. Some, by their very nature, are designed to keep people online and on platforms, which suggests that they may be designed to be addictive.

There are jurisdictions, such as New York in 2024 that have banned certain platforms from using algorithms for young people under 18 unless their parents' consent. The question of how this ban will be enforced has not yet been fully addressed and it is still too early to assess the effects of this legislative measure.

8. *Please could you summarise if, or how children in Jersey could be better protected from risks posed by online harms?*

¹ https://www.oecd.org/en/publications/towards-digital-safety-by-design-for-children_c167b650-en.html

Protecting children from online harms is a shared, cross-ministerial responsibility. We are aiming to make Jersey a digitally secure jurisdiction and children are an essential focus in this regard.

In the areas that we oversee, data protection and telecommunications regulation provide a means to protect privacy rights of children and the misuse of personal data in an online world.

Jersey is amongst the jurisdictions with the highest level of protection for personal data, including that of children, as recognised by the adequacy decision of the European Commission in 2024. Still, we have to remain vigilant in order to keep pace with the rapidly evolving online world.

We will continue to proactively monitor ongoing initiatives in several areas, such as online market regulation, moderation requirements for platforms or age-verification in a variety of jurisdictions to keep the internet safe and protect citizens rights.

We hope the above information provides clarity to the areas you have raised.

Yours sincerely,



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