

STATES OF JERSEY



DRAFT EDUCATION (AMENDMENT No. 3) (JERSEY) LAW 201-

Lodged au Greffe on 19th June 2017
by the Minister for Education

STATES GREFFE



Jersey

DRAFT EDUCATION (AMENDMENT No. 3) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Education has made the following statement –

In the view of the Minister for Education, the provisions of the Draft Education (Amendment No. 3) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy R.G. Bryans of St. Helier**

Minister for Education

Dated: 14th June 2017

REPORT

Restrictive Physical Intervention – proposed amendment to the Education (Jersey) Law 1999

The Minister for Education is proposing to amend the Education (Jersey) Law 1999 (“the Law”) in order to –

- clarify the legal position of teachers and other school staff in the event that they need to use a physical intervention when dealing with a child and when this is appropriate;
- more closely align Jersey and UK codes of practice and legislation on this subject;
- provide clearer guidance for teachers and other staff in charge of children in Jersey schools in this area, particularly those recruited and trained from the English system.

The current position

There is currently no specific legislation governing the use of restrictive physical intervention (“RPI”) by staff in Jersey schools. However, the Education Department has in place a robust policy and training programme based on best practice. The policy identifies the circumstances when RPI may be used, as follows –

To prevent a pupil from doing or continuing to do any of the following:

- *Committing an offence.*
- *Causing injury, or damage, to a person or the property of any person (including the person themselves).*
- *Prejudicing the maintenance of good order and discipline in the school or among pupils receiving education in the school, whether during lessons or elsewhere.*

The issue is already covered under existing customary law, which states in broad terms that all citizens, including teachers and school staff, can intervene in an emergency to use reasonable force in self-defence or to prevent someone from –

- committing a criminal offence, or
- injuring themselves or injuring someone else, or
- causing damage to property.

Only *reasonable* force can be used, and the degree of force used must therefore be proportionate. If the force used is greater than is needed, the person using it may be prosecuted for assault.

The proposed amendment

The draft Law, if enacted, would echo the customary law position and apply it specifically to teachers and teaching staff by providing that a member of teaching staff is able use to such force as is “*reasonable in the circumstances*” to prevent a child from –

- “*committing any offence*”, or
- “*causing personal injury to, or damage to the property of, any person (including the child himself or herself)*”.

However, the draft Law would take the existing position one stage further by providing for the maintenance of good order. For example, at present, if a child is being disruptive in class, their behaviour will not necessarily involve any risk of injury to person or damage to property, so there may be no justification in purely legal terms for using RPI, even though this may be needed to conduct the lessons properly.

In order to allow a teacher to act adequately in the interests of good order, the draft Law (in common with the relevant provisions in English law¹) would provide that a member of staff is also able to use such force as is “*reasonable in the circumstances*” to prevent a child from –

- “*prejudicing the maintenance of good order and discipline at the school or among any children receiving education at the school, whether during a teaching session or otherwise*”.

This is in line with current Education Department policy and UK legislation.

Scope of the proposed legislative change

The proposed amendment provides additional clarity in law for both teaching and non-teaching staff who work in schools. It does not cover other staff working in school (e.g. visiting staff) unless the head-teacher has specifically authorised a particular member of staff to work with pupils in the school. This could include leading specialist lessons (e.g. members of the Youth Service), or working alongside specific individual children (e.g. staff from the Alternative Provision Support Service).

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for Education, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

¹ s.93 Education and Inspections Act 2006

APPENDIX TO REPORT

Human Rights Notes on the Draft Education (Amendment No. 3) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Education (Amendment No. 3) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law will amend Part 6 of the Education (Jersey) Law 1999 (the “**Education Law**”) which contains provisions concerning behaviour and discipline within schools. The draft Law will introduce new provisions into the Education Law that will enable all teaching and non-teaching staff, and other persons who are not employed staff but who have been specifically authorised, to exercise reasonable force for the purpose of preventing a child from committing offences, causing personal injury or damage to property, or prejudicing the maintenance of good order and discipline, whether during a teaching session or otherwise.

Article 8 of the ECHR provides for the right to respect for private and family life, which includes the right to physical integrity. The power in new Article 36A(3) for members of staff to use force against a child has the potential, when exercised, to amount to an interference with that child’s Article 8 ECHR right. The power to use reasonable force against a child also has the potential to engage Article 3 ECHR (prohibition of ill-treatment); however, that Article is more relevant in cases of corporal punishment, in which the use of force is arguably more extreme (i.e. where the treatment is considered inhuman or degrading).

Any interference by the state in an individual’s Article 8 ECHR right must be justified under Article 8(2) ECHR. The interference must be: (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out in Article 8(2) ECHR; and (c) necessary in a democratic society (that is in pursuit of a pressing social need and proportionate to the legitimate aim pursued).

In the present case, the interference, namely the use of force, is provided for by legislation and its use would, in exercising a statutory power that is precise in its terms and accessible, be in accordance “with the law”. The exercise of the Article 36A power must be in pursuit of the purposes in Article 36A(3)(a)–(c), i.e. preventing a child from committing an offence, causing injury and damage and prejudicing order and discipline. These grounds for exercising force come within the aims set out in Article 8(2) ECHR, namely the interests of public safety, the prevention of disorder or crime, and the protection of the rights and freedoms of others. Accordingly, the interference with the Article 8(1) ECHR right in this case would be regarded as being committed in pursuit of a legitimate aim for Article 8 ECHR purposes.

For an interference with the Article 8(1) ECHR right to be considered “necessary in a democratic society” it must, in addition to pursuing a legitimate aim, be proportionate to that aim. “Necessary” implies the existence of a pressing social need for the

interference in question. A measure will only be proportionate to the legitimate aim pursued if supported by sufficiently persuasive reasons.

The protection of school pupils from injury from the actions of other pupils is of such importance that it can be considered a pressing social need. Equally, preventing damage to property and the committal of other criminal offences is of sufficient public interest that it would also be considered a social need. As such, the exercise of reasonable force in such circumstances against an offending school pupil would be considered “necessary”, and that use of force would be considered proportionate if, in practice, the level of force used is commensurate to the seriousness of the behaviour involved.

Education Department guidance on restrictive physical interventions is in the process of being updated to reflect the amendment to the Education Law and will provide guidance to school staff as to how to exercise the power. In addition, the guidance requires school staff to record and report incidents of the use of force and to notify this to parents and an external monitoring body. Such guidance is an additional safeguard against the disproportionate application of the power in Article 36A and will assist the power to be applied in an ECHR compatible manner.

Explanatory Note

This Law would amend Part 6 of the Education (Jersey) Law 1999 (the “Education Law”) which contains provisions concerning behaviour and discipline within schools.

Article 1 would insert a new Article 36A within Part 6 of the Education Law. The effect of that provision would enable all teaching and non-teaching staff of any provided or non-provided school, and other persons who are not employed staff of any such school but who have been specifically authorized by the school’s head teacher to have lawful control or charge of children at the school, to exercise reasonable force for the purpose of preventing a child from –

- (a) committing any offence;
- (b) causing personal injury or damage to property; or
- (c) prejudicing the maintenance of good order and discipline, whether during a teaching session or otherwise.

The power to exercise reasonable force may only be used where the teacher, other member of staff or authorized person and the child are on school premises, or off school premises if any of those persons have lawful control or charge of the child.

The power to exercise reasonable force in the circumstances described, does not authorize or constitute the use of corporal punishment.

Article 2 provides for the title of this Law and for it to come into force 7 days after it is registered with the Royal Court.



Jersey

DRAFT EDUCATION (AMENDMENT No. 3) (JERSEY) LAW 201-

A LAW to amend further the Education (Jersey) Law 1999

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Article 36A of the Education (Jersey) Law 1999 inserted

After Article 36 of the Education (Jersey) Law 1999¹ there is inserted the following Article –

“36A Power of members of staff to use reasonable force

- (1) This Article applies –
 - (a) to provided and non-provided schools; and
 - (b) to a person who is, in relation to a child, a member of the staff of any school at which education is provided for the child.
- (2) In this Article –
 - (a) ‘member of the staff’ in relation to a school means –
 - (i) any teacher or other person whose principal place of employment is at the school at which education is being provided in respect of a child, and
 - (ii) any other person who, with the authority of the head teacher, has lawful control or charge of the child for whom education is being provided at the school;
 - (b) ‘offence’ includes anything that would be an offence but for the operation of any presumption that a person under a particular age is incapable of committing an offence.

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- (3) A person to whom this Article applies may use such force as is reasonable in the circumstances for the purpose of preventing a child from doing (or continuing to do) any of the following, namely –
- (a) committing any offence;
 - (b) causing personal injury to, or damage to the property of, any person (including the child himself or herself); or
 - (c) prejudicing the maintenance of good order and discipline at the school or among any children receiving education at the school, whether during a teaching session or otherwise.
- (4) The power conferred by paragraph (3) –
- (a) may be exercised only where the member of the staff and the child –
 - (i) are on the premises of the school in question, or
 - (ii) are elsewhere and the member of the staff has lawful control or charge of the child concerned;
 - (b) is in addition to any powers exercisable under any other enactment or rule of customary law and is not to be construed as restricting what may lawfully be done under any such other powers.
- (5) The exercise of the power conferred by paragraph (3) –
- (a) does not authorize the giving of corporal punishment to a child; and
 - (b) does not constitute the giving of corporal punishment to a child by virtue of anything done for reasons that include averting –
 - (i) an immediate danger of personal injury to, or
 - (ii) an immediate danger to the property of, any person (including the child himself or herself).
- (6) In paragraph (5), the reference to giving corporal punishment to a child is to doing anything for the purpose of punishing that child (whether or not there are other reasons for doing it) which, apart from any justification, would constitute assault.”.

2 Citation and commencement

This Law may be cited as the Education (Amendment No. 3) (Jersey) Law 201- and shall come into force 7 days after the day it is registered.

¹ *chapter 10.800*