

STATES OF JERSEY



DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202- (P.12/2023): COMMENTS

**Presented to the States on 27th April 2023
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

The Children, Education and Home Affairs Scrutiny Panel ('the Panel') received a briefing on the proposed changes to the Commissioner for Children and Young People (Jersey) Law 2019 (the 'Law') on 16th January 2023. Following the subsequent lodging of the Draft Commissioner for Children and Young People (Amendment of Law) (Jersey) Regulations 202- ([P.12/2023](#)) (the 'Regulations') by the Chief Minister, the Panel felt that it would be helpful to set out the understanding it has of the Regulations in a brief comments paper, to assist other Members of the States Assembly ahead of the debate.

Term of Office

It is proposed that the term of office for the Commissioner for Children and Young People (the 'Commissioner') will change from 8 years to 6 years. The report accompanying the proposition states that this will align Jersey with best practice elsewhere in Britain. The Panel undertook research to establish the length of office terms for Children's Commissioners (or equivalent) in other jurisdictions. It is noted that neither Guernsey, or the Isle of Man, have a Children's Commissioner at the time of this report.

Jurisdiction	Length of 1 term of office
England (Children's Commissioner for England)	6 years ¹ No re-appointment is possible.
Wales (Children's Commissioner for Wales)	7 years ² No re-appointment is possible.
Scotland (The Children and Young People's Commissioner Scotland)	6 years ³ Was previously a term of 8 years. Recruitment is underway for a new Commissioner and is noted to be a single term of appointment only.
Northern Ireland (Northern Ireland Commissioner for Children and Young People 'NICCY')	4 years ⁴ May be re-appointed for a second term.
Ireland (Ombudsman for Children)	6 years ⁵ May be re-appointed for a second term.

The Panel noted that the Report of the Independent Jersey Care Inquiry 2017 ([R.59/2017](#)) (the 'Inquiry report'), which had recommended the establishment of a Commissioner, had also stated that "*the appointment should be made on the basis of the*

¹ [Children Act 2004, Schedule 1, paragraph 3\(4\)](#)

² [Rocio Cifuentes- The Children's Commissioner for Wales \(childcomwales.org.uk\)](#) (Accessed on 14th April 2023)

³ [Information for Applicants - Commissioner for Children & Young People in Scotland \(parliament.scot\)](#) (Accessed on 14th April 2023)

⁴ [The Commissioner for Children and Young People \(Northern Ireland\) Order 2003, Schedule 2, paragraph 3 \(2\)](#)

⁵ [Ombudsman for Children Act, 2002: Part 2, Chapter 1, paragraph 4 \(4\)](#)

Commissioner serving no longer than a six-year period of office.”⁶ Whilst the role of Commissioner was established, the recommendation for length of term was not adopted at that time.

As mentioned in the report accompanying P.12/2023, the recommendation of a six-year term of office for the Commissioner had been reiterated in the Report of the Jersey Care Inquiry Panel 2019 (Two-Year Review) ([R.123/2019](#)) (the ‘Two-Year Review’), which stated that *“Our opinion is based on the need to ensure that the Commissioner is able to sustain her independence and importantly the public perception of that independence.”⁷*

The Panel is content that the proposal to change the Commissioner’s appointment term to a maximum of six-years is consistent with other jurisdictions and notes that it will satisfy the Inquiry report’s original recommendation.

Disqualifications for appointment

As outlined in the report accompanying P.12/2023 the current Law disqualifies the Acting Commissioner, or serving staff at the Commissioner’s office, to apply for and be considered for the role of Commissioner.

The Panel considered the rationale for the Law to originally be drafted with that exclusion and noted from the Inquiry report that:

“A consistent theme from those who were supportive of this idea [a Commissioner for Children] was that there was an absolute need to ensure that any such position was seen to be fully independent of the States.”⁸

The Panel is content that the proposed change to the Law will not compromise the independence of the Commissioner’s role due to the remaining exclusions for any person who is classified as a States employee, per Article 2 of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#) (the ‘2005 Law’).

The Panel is also reassured by the fact that the appointment of a Commissioner would follow an independent recruitment process overseen by the Jersey Appointments Commission.

As further assurance, the Commissioner is one of the office holders listed in Schedule 1 of the 2005 Law which, as per Schedule 1, Paragraph 5 (2) (c) of the Regulations would mean that it would not be possible to re-appoint an existing, or former, Commissioner for another term of office. This is unchanged by the proposed regulations.

The Panel is in agreement with the principle that the Acting Commissioner and any other staff working for the Commissioner’s office should have the right to apply for the full-time Commissioner role.

⁶ The Report of the Independent Jersey Care Inquiry 2017 ([R.59/2017](#)), Volume 3, page 51, paragraph 13.9

⁷ Report of the Independent Jersey Care Inquiry Panel 2019 (Two-Year Review) ([R.123/2019](#)), paragraph 12

⁸ The Report of the Independent Jersey Care Inquiry 2017 ([R.59/2017](#)), Volume 3, page 50, paragraph 13.7

Scope of the Regulations

The Panel acknowledges that lodging the Regulations in 2023 is due to the vacancy which arose in the permanent Commissioner role in 2022 and, also, that the purpose of the Regulations is not solely to address any outstanding recommendations of the Inquiry report. However, the Panel highlights that this juncture could have been an opportunity to address other recommendations the Inquiry report made, for example:

- The recommendation to explore the possibility of pan-Island or joint-jurisdiction Commissioner, for example, a joint Commissioner with other Crown Dependencies. The Two-Year Review stated that:

“It is our view that such an arrangement would bring increased opportunities to underline the independence of the office.”⁹

- The issue highlighted in the Two-Year Review that:

“There is, in our view, a potential problem which could influence the attraction of future high calibre candidates from off the island, in that the current residency rules mean that at the end of a 6 or 8 year appointment, the post holder would not be able to continue to reside in or own property in Jersey. We therefore recommend that further consideration should be given as to what might be done to ensure the future attractiveness of the post to candidates of the highest calibre.”¹⁰

The report accompanying P.12/2023 quotes the above, however, does not confirm what the Government has done, or will do, to address it.

The Panel would be grateful if the Chief Minister would refer to these points when presenting the Regulations to the Assembly and advise the extent that they were considered as part of the changes proposed by the Regulations and if there are aspects which will be considered further in the future.

Conclusion

The Panel is supportive of the Regulations proposed by P.12/2023 and recognises the importance of recruiting a permanent Commissioner to undertake this important role serving the interests of Jersey’s children and young people.

⁹ Report of the Independent Jersey Care Inquiry Panel 2019 (Two-Year Review) ([R.123/2019](#)), paragraph 17

¹⁰ Ibid, paragraph 12