

STATES OF JERSEY



Jersey

DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 24th March 2023
by the Chief Minister
Earliest date for debate: 23rd May 2023**

STATES GREFFE

REPORT

Background

Following the resignation of the Children's Commissioner in July 2022, the Chief Minister and President of the Scrutiny Liaison Committee (SLC) set out the interim arrangements for the Office in their Report presented to the States (R.102/2022)¹ on 26th July 2022.

As a result of these interim arrangements, a member of the Children's Commissioners Office was appointed to the role of Acting Commissioner. This temporary appointment was made in accordance with paragraphs 7(1) and 7(5) of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019².

The Office has continued to carry out its functions during this interim period. In advance of commencing the process for a permanent appointment to the role, the Chief Minister and President of the Scrutiny Liaison Committee have agreed that some amendments to the 2019 Law would be appropriate. Accordingly, these draft Regulations propose the removal of certain disqualifications for the role (relating to an Acting Commissioner and serving staff of the Commission) and propose to reduce the maximum tenure period of the Commissioner.

Key Considerations

1. Disqualification for appointment

The formal process to make an appointment to the substantive position is described in paragraph 4 of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019, as set out below.

- (1) Subject to the provisions of this Schedule, the Commissioner must hold and vacate office as the Commissioner in accordance with the terms and conditions of his or her appointment.
- (2) The office must be held by a person appointed by the States on a proposition signed by the Chief Minister and the president of the scrutiny liaison committee.
- (3) The States must debate the proposition in camera.
- (4) Before recommending to the States the appointment of a person to hold the office, the Chief Minister and the president of the scrutiny liaison committee must consult with, and take into account the views and recommendations, of the Jersey Appointments Commission, and the views of the youth advisory panel as to the suitability of the person concerned.
- (5) The Chief Minister and the president of the scrutiny liaison committee must –
 - (a) not recommend a person for appointment unless satisfied that the person has the qualifications and experience necessary to discharge the functions of the office; and
 - (b) make a recommendation of a person for appointment on the basis that such a recommendation respects, upholds and defends the independence of the office of Commissioner.

¹ [Children's Commissioner: Notice of Resignation](#); 26th July 2022

² [Commissioner for Children and Young People \(Jersey\) Law 2019](#)

- (6) Subject to paragraph 5(5)(b), an appointment to hold the office of Commissioner is for a fixed term of 8 years which cannot be extended.

The Law at present includes a wide scope of exclusions for appointment to the role. These are set out in paragraph 5 of the Schedule (copied below). These exclusions are intended to ensure added trust and confidence in the independence of the office given the broad remit of the Commissioner's functions. The extent of the proposed disqualifications means that recruitment to the post from within the Island, at present, is unlikely.

- (1) A person cannot be appointed to hold the office of Commissioner more than once.
- (2) A person cannot hold the office of Commissioner if he or she –
 - (a) has been, is, or becomes a member of the States;
 - (b) subject to sub-paragraph (5), is a States' employee (within the meaning of Article 2 of the 2005 Law);
 - (c) has been, or is the holder of an office listed in Schedule 1 to the 2005 Law³;
 - (d) has an interest in the provision of services in respect of children and young people in Jersey –
 - (i) whether financial, or
 - (ii) in his or her capacity as an officer, member, trustee or employee of a body providing such services; or
 - (e) has been, or is acting Commissioner and clause (d) has applied or applies in his or her case.
- (3) A person on being appointed to hold the office of Commissioner must cease to hold any other office or employment (whether or not for remuneration) with any States funded body or independently audited States body.
- (4) A person whilst holding office cannot take up any other office or employment referred to in sub-paragraph (3).
- (5) Despite sub-paragraph (2)(b) –
 - (a) a person appointed to carry out the functions of the Commissioner before the commencement of this Law is –
 - (i) to hold the office of the Commissioner upon the commencement of this Law, and
 - (ii) taken to have been appointed in accordance with paragraph 4; and
 - (b) any period served by the person mentioned in clause (a) before the commencement of this Law, is to be disregarded for the purposes of the 8 year fixed term specified in paragraph 4(6).

It has become clear that the current set of disqualifications do not allow an Acting Commissioner, or any serving commission staff, to be considered for the role. As the

³ [Employment of States of Jersey Employees \(Jersey\) Law 2005 \(jerseylaw.je\)](http://jerseylaw.je) identifies list of office in Schedule 1. These include Bailiff, Deputy Bailiff, Attorney General, Solicitor General, Viscount, Deputy Viscount, Judicial Greffier, Deputy Judicial Greffier, Greffier of the States, Deputy Greffier of the States, Master of the Royal Court, Magistrate, Information Commissioner

Law currently stands, the Acting Commissioner and any other staff working for the Commissioner would be disqualified on the basis that they are employed by the States Employment Board.

On reflection, this is considered to be an unintentional consequence of the current Law, and an excessive limitation. So long as an individual does not breach any of the other exclusions, being prevented from applying for the Commissioner role purely on the basis that they have been an Acting Commissioner, or because they are a member of Commission staff, seems unreasonable. Serving in one of these roles does not, of itself, impact on the independence of an individual for the role. This amendment therefore lifts the exclusion on an Acting Commissioner, or Commission staff, from applying.

It is important to emphasise that the intention of this amendment is purely to lift the prohibition on these individuals from applying for the post of Commissioner. An appointment will be made following a full, independent recruitment process, overseen by the Jersey Appointments Commission, in consultation with the Youth Advisory Panel and once the requirements of the 2019 Law have been met. This includes a final appointment being recommended by the Chief Minister, the President of the Scrutiny Liaison Committee, and approved by the States Assembly.

2. Tenure of Office

In the Report of the Independent Jersey Care Inquiry Panel 2019 (Two-Year Review)⁴ the Panel praised the establishment of the Children's Commissioners Office and its legal framework and acknowledged this development as an important step.

The Panel also commented on the term of appointment identified in the Commissioner for Children and Young People (Jersey) Law 2019. The Panel's recommendation is set out below. It should be noted that this recommendation was rejected at the time.

It was, and remains, our view that the appointment of the Commissioner should be made on the basis of the appointee serving no longer than a 6-year term of office, consistent with the other UK Commissioners. 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. The decision reflected in the new Jersey legislation is, however, that the term of appointment should be for 8 years. 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.

Existing Regulation making powers contained within the Commissioner for Children and Young People (Jersey) Law 2019 would allow an amendment to paragraph 4(6) of the Schedule to revise the length of tenure for the Commissioner in accordance with the recommendation of the 2019 Panel. This amendment therefore proposes the reduction in the length of tenure accordingly from 8 to 6 years. This is in order to align with best practice elsewhere in Britain.

⁴ Presented as a [R.123/2019](#) to the States on 23rd September 2019 by the Minister for Children and Housing

Financial and manpower implications

There are no additional resource implications that would arise as a consequence of the adoption of these draft Regulations.

EXPLANATORY NOTE

These Regulations, if passed, will amend the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019 (the “Law”). The amendments will have the effect of reducing the term of office of the Commissioner for Children and Young People (the “Commissioner”) from 8 to 6 years, and of removing the prohibition on the appointment of the following people to hold the office of Commissioner (the “office”), namely –

- the acting Commissioner for Children and Young People (the “acting Commissioner”);
- any former acting Commissioner; and
- a member of the Commissioner’s staff.

Regulation 1 amends paragraphs 4 and 5 of the Schedule to the Law (the “Schedule”). In paragraph 4 of the Schedule, the Commissioner’s term of office is reduced from 8 to 6 years. In paragraph 5 of the Schedule, the amendments provide that the disqualification for appointment to the office no longer applies in respect of a States’ employee who is appointed to hold the office of acting Commissioner (permitted under paragraph 7 of the Schedule) or who is a member of the Commissioner’s staff provided under paragraph 9 of the Schedule. The disqualification for appointment is also removed in respect of anybody who formerly held the office of acting Commissioner. However, qualification for appointment to the office in respect of these particular people is not automatic. For example, a former acting Commissioner is disqualified if that individual is now a States’ employee who is not a member of the Commissioner’s staff. Paragraph 5 is also consequentially amended so that –

- a member of the Commissioner’s staff must, if they are appointed to the office, cease their employment with the States; and
- a spent provision, concerning the terms of appointment of the first Commissioner appointed under the Law, is removed.

Regulation 2 provides for the title by which these Regulations may be cited and for their commencement 7 days after they are made.



Jersey

DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Articles 3(3) and 30 of the [Commissioner for Children and Young People \(Jersey\) Law 2019](#) –

1 Schedule to the [Commissioner for Children and Young People \(Jersey\) Law 2019](#) amended

In the Schedule to the [Commissioner for Children and Young People \(Jersey\) Law 2019](#) –

- (a) in paragraph 4 (appointment and tenure of office), for sub-paragraph (6) there is substituted –
 - “(6) An appointment to hold the office of Commissioner is for a fixed term of 6 years which cannot be extended.”;
- (b) in paragraph 5 (disqualification for appointment, restrictions on holding other appointments and exceptions) –
 - (i) for sub-paragraph (2) there is substituted –
 - “(2) A person cannot be appointed to hold the office of Commissioner if the person –
 - (a) has been, is, or becomes a member of the States;
 - (b) is a States’ employee (within the meaning of Article 2 of the 2005 Law) other than –
 - (i) a States’ employee who is appointed to hold the office of acting Commissioner, or
 - (ii) a member of the Commissioner’s staff provided under paragraph 9;
 - (c) has been, or is the holder of an office (apart from being the holder of the office of Commissioner for the time being) listed in Schedule 1 to the 2005 Law; or
 - (d) has an interest in the provision of services in respect of children and young people in Jersey –
 - (i) whether financial, or

- (ii) in the person’s capacity as an officer, member, trustee or employee of a body providing those services.
- (2A) Unless sub-paragraph (2) otherwise applies, the following people are not disqualified from being appointed to hold the office of Commissioner –
- (a) the acting Commissioner;
 - (b) any former acting Commissioner; and
 - (c) a member of the Commissioner’s staff.”,
- (ii) in sub-paragraph (3) after “(whether or not for remuneration) with” there is inserted “the States or”,
- (iii) for sub-paragraph (5) there is substituted –
- “(5) If the acting Commissioner is appointed to hold the office of Commissioner, any period served by the acting Commissioner before that appointment is to be disregarded for the purposes of the 6-year fixed term specified in paragraph 4(6).”.

2 Citation and commencement

These Regulations may be cited as the Commissioner for Children and Young People (Amendment of Law) (Jersey) Regulations 202- and come into force 7 days after they are made.