

STATES OF JERSEY



DRAFT EDUCATION (AMENDMENT No. 3) (JERSEY) LAW 201- (P.56/2017): COMMENTS

**Presented to the States on 25th September 2017
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

[P.56/2017: Draft Education \(Amendment No. 3\) \(Jersey\) Law 201-](#) (“the draft Law”) asks the States Assembly to approve an amendment to Part 6 (‘BEHAVIOUR AND DISCIPLINE’) of the [Education \(Jersey\) Law 1999](#) (“the Law”) to enable teaching and non-teaching staff and any persons authorized by the head teacher to exercise reasonable force for the purpose of preventing a child from –

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

The amendment will be achieved by a new Article 36A being inserted in Part 6 of the Law.

At the States Sitting of Wednesday 13th September, the Education and Home Affairs Scrutiny Panel requested, under Standing Order 72 of the Standing Orders of the States of Jersey, that the draft Law be referred to them for further scrutiny, in order to clarify concerns relating to paragraph (2)(a)(ii) of the new Article 36A to be inserted by the draft Law. This relates to the ability of the head teacher to authorise persons other than employees of the school to use reasonable force when in lawful control or charge of a child at the school. When questioning the Minister for Education in the States Assembly on this Article, the Panel found that the Minister was unable to provide an answer detailing the list of people who would be authorised to undertake reasonable force under the Law.

It was the view of the Panel that this particular section could be seen as far too wide in scope, and did not specify who could be delegated this authority. It also held concerns that parents may not be aware of who was able to use reasonable force against their child should the necessity arise.

The Panel relayed these concerns to the Education Department, from whom it received the following response on Tuesday 19th September (the full response can be found at the **Appendix** attached to these Comments) –

“Article 36A(2)(a)(ii) also refers to a person ‘who, with the authority of the head teacher, has lawful control or charge’ of the child concerned. In practice, this is restricted to a limited number of suitably trained professionals. Only recognised employees with current DBS police checks and MAYBO training will be covered by this.

Individuals included are:

- *Specialist staff from the Inclusion and Early Intervention team who are named on an individual child’s handling plan*
- *Senior and assistant youth workers who are leading activities such as Prince’s Trust programmes.*

Parent helpers and other volunteers are not included and will not be given legal care and control of children or the permission to use RPI.

The guidance is currently in draft and will be issued, as originally planned, when the law is approved and comes into effect.”

The Panel notes that the guidance surrounding this change in the Law is due to be implemented subsequent to the draft Law being adopted by the States. The Minister has also stated in discussions with the Panel that, although a list of named individuals able to undertake reasonable force will not be maintained in the school for parental information, a list of the job titles of qualified persons will be available.

The Panel is satisfied that the amendment made under this draft Law is appropriately worded, but only on condition that the Minister promptly and comprehensively fulfils his pledge to implement the policy, provides a timeline for its implementation, and publishes a list of qualified job titles within schools, should the States approve the draft Law. The Panel will actively hold the Minister to account regarding these elements.

APPENDIX

Questions to the Education Department regarding P.56/2017 – Answers received Tuesday 19th September 2017

Q: I'm following up on yesterday's referral of P.56. As you'll know, the Minister agreed to provide a list in response to Deputy Doublet's queries about Article 36A(2)(a)(i) and (ii). In addition, the Panel would also be grateful if you could forward the full policy or guidance concerning how head teachers are to take decisions relating to those Articles, and confirm if it has been issued or is in draft. It has also requested a response from the Minister to the following questions:

A: *The definition of 'member of staff' under the law specifically means a teacher or other person whose principal place of employment is at the school of the child concerned.*

Article 36A(2)(a)(ii) also refers to a person 'who, with the authority of the head teacher, has lawful control or charge' of the child concerned. In practice, this is restricted to a limited number of suitably trained professionals. Only recognised employees with current DBS police checks and MAYBO training will be covered by this.

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Q: Is it appropriate to determine a legislative change based on a policy which has not changed for over 2 years but gives the impressions that it does comply with up-to-date best practice by stating May 2017 on it?

A: *The initial answer to Deputy Vallois' e-mail was incomplete and we apologise for this. The officer who oversaw this project was not available when the response to States members was drafted.*

For clarity, the Minister can confirm that the policy was reviewed and updated on the advice of a States legal adviser in May 2017 when the legislation was being prepared. This is why it bears that date. The policy was updated in some areas to include current practice, job roles and terminology.

The Education Department policy is in line with current best practice and guidance in relation to the treatment of young people and mirrors the key principles in relevant UK documentation and legislation. The reference to the 1989 guidance has been removed from the policy and an updated version is now available on gov.je.

Q: What are the differences between both guidance (1989 and 2004 UK laws) and what recourse do the Assembly have if the Minister does not hold up the standards which he promotes for the legislative changes imposed?

A: *In drafting the Jersey policy, the Education Department wanted to ensure that it was in alignment with the recognised 'key principles' that underpin the treatment of children in the UK. The difference between the 'Guidance and Regulations Volume 5 Children's Homes' and the more recent guidance of 2015 is the terminology and focus. The earlier principles refer to operational issues such as use of a 'Statement of purpose', for example. This has been removed. The later guidance is more focussed on values and the importance of nurturing children and being attentive to their needs. The revised Jersey policy is compatible with the latest guidance and approach and echoes its key principles.*

If the standards in relation to the use of RPI are not upheld then the recourse for students and their families is to prosecution under the law. The amendment clarifies when action could be taken.

The Minister receives updates from senior managers on all aspects of the education service but particularly if there is a sensitive issue such as the use of RPI.