

STATES OF JERSEY



DRAFT CHILDREN (CONVENTION RIGHTS) (JERSEY) LAW 202- (P.19/2022): COMMENTS

**Presented to the States on 25th March 2022
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

The Children, Education and Home Affairs Panel (hereafter ‘the Panel’) welcomes the Draft Children (Convention Rights) (Jersey) Law 202- (hereafter ‘the draft Law’) which has been lodged by the Minister for Children and Education for debate on 29th March 2022. The draft Law, if adopted, would place a statutory duty on the ‘duty bearers’¹ defined within it to give due regard to the United Nations Convention on the Rights of the Child (UNCRC) when forming a proposition and developing policy and legislation for debate in the States Assembly. The Panel has reviewed the proposals and has put forward three amendments to the draft Law, which it will briefly outline. The Panel has also asked a number of questions in relation to the draft Law that were submitted to the Minister for Children and Education for a response. The response can be read [here](#) and for Members information has also been provided at appendix one.

Amendments

The Panel has lodged three amendments to the draft Law further to its review. These are outlined as followed:

[Amendment One](#) - This amendment would change the manner in which decisions are made about which types of propositions can be exempted from requiring a Children’s Rights Impact Assessment (CRIA). The draft Law allows for the Minister for Children and Education to do this by making a Ministerial Order to add or remove exemptions outlined in Schedule Two. The Panel’s amendment changes this to allow the States Assembly to decide whether to change the exemptions by Regulations instead. It is the view of the Panel that this amendment will increase accountability in relation to the exemptions and the Panel is pleased to note that the Minister for Children and Education has accepted this amendment.

[Amendment Two](#) - The draft Law currently states that a CRIA is done in two stages when a duty bearer is putting together a proposition (topic for debate). A preliminary assessment determines whether a full CRIA is required, and this must be completed prior to the proposition being lodged. There is no requirement in the draft Law for a CRIA to be done at either stage for amendments to propositions. The Panel’s amendment would make it a statutory duty for a preliminary assessment only to be completed for an amendment to a proposition and any subsequent amendments. It would be up to the individual duty bearer to decide whether to do a full CRIA if the preliminary assessment determines that one is required. The reasoning for this amendment is in order to place children’s rights firmly at the centre of decision making within the States Assembly to assist in the cultural shift that was required following the Independent Jersey Care Inquiry. It is also in keeping with the States Assembly’s previous decision taken on [P.63/2017](#).

[Amendment Three](#) - The draft Law states that the Law will be brought into force on a day specified by the Minister for Children and Education through a Ministerial Order. The Panel’s amendment changes this so that the States Assembly agrees the date via an Appointed Day Act instead.

¹ Duty bearers as defined in the draft Law include Ministers, Elected States Members, Committees and Panels of the States Assembly, and a number of Public Authority Duty Bearers as set out in Schedule 2 of the draft Law.

General Comments

As stated previously, the Panel welcomes the draft Law and notes this is a step forward in order to assist how the States Assembly puts children's rights at the forefront of decision making. It also deals with one of the key issues raised in the Independent Jersey Care Inquiry that legislation relating to children had fallen behind other jurisdictions by some way.

The Panel has made its amendments to the draft Law in order to strengthen accountability in respect of how it is implemented and monitored. It has also offered the States Assembly with an opportunity to decide how far it wishes to extend the requirement for a CRIA. The Panel does not agree with the Minister's view that its amendment to extend preliminary assessments to all amendments etc. will turn the CRIA process into a tick box exercise, indeed it is of the view that in order to create the cultural shift required and promoted by the draft Law children's rights must be placed at the forefront of all aspects of Assembly business. It is, therefore, of the view that this amendment will achieve this by ensuring children's rights are considered by all duty bearers whether bringing a proposition or an amendment to a proposition.

One point that the Panel would raise is the use of the term 'public authorities' within this legislation. It is noted by the Panel that this term is also used to describe a number of different bodies and functions in other legislation, including those relating to data protection and Freedom of Information. Whilst the interpretation is defined in the draft Law as meaning only those entities and bodies set out in Schedule One, the Panel would suggest that the variance with those definitions in other legislation could cause confusion. It would, therefore, suggest that the next Council of Ministers gives consideration as to whether a consolidated definition of 'public authorities' is created to reduce confusion and set reality of expectations.

Finally, the Panel would like to thank the Minister for Children and Education and Officers for ensuring it has been briefed throughout the development of the draft Law and also for providing the responses appended to these comments. The Panel would recommend Members to support the draft Law and the amendments that it has brought forward as a result of its review.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Order 37A due to Panel Members having to prioritise the Bridging Island Plan debate.

Appendix One – Response from Minister for Children and Education to Panel Questions

General

1. Why has the decision been taken within the draft Law to exempt amendments to propositions from requiring a CRIA?

Concerns were raised during the drafting process, following consultation with Scrutiny and Ministers, regarding the volume of additional work for duty-bearers created by the need to complete statutory CRIAs.

To achieve a more manageable and proportionate duty in the first instance, a decision was made to exclude amendments from the Article 6 duty. Analysis of Assembly activity in 2019 suggests that this will remove the need to complete approximately 85 CRIAs each year for amendments, including the amendments made to the Government Plan.

Article 6(2) of the draft Law relies on the definition of ‘proposition’ found in Standing Orders which comprises both propositions and amendments. As such, amendments have been specifically exempted under paragraph (d) of Schedule 2 and thus have not been permanently ruled out of scope.

Following the enactment of the Law, this arrangement will allow the volume of work generated under Article 6 to be monitored whilst duty-bearers become accustomed to the CRIA process and grow into the due regard duty.

The Minister has Order making powers (See Article 6(6) and (7)) to amend Schedule 2, after consulting with the Article 6 duty-bearers. This arrangement allows for the exemption to be removed from all or some types of amendments in the future, if this is considered to be appropriate.

2. Is there an intention or have there been any discussions with the Privileges and Procedures Committee to make Standing Orders more robust to reduce the ability to raise Standing Orders?

The current and previous Chair of PPC were briefed during the development of the draft Law, to consider whether there might be a need to amend Standing Orders to take account of the CRIA duty falling on Members with respect to the propositions they lodge.

The ‘note’ which follows Standing Order 21 makes reference to the requirements of the Human Rights (Jersey) Law 2000 and the responsibility of Ministers to publish a statement of compatibility before the 2nd reading of a draft Law. We understand PPC may give consideration to the addition of a similar note in relation to the statutory CRIA process, once the draft Law has been approved and registered.

The draft Children (Convention Rights) (Jersey) Law 202- will not affect the Assembly’s power to amend Standing Orders; this is exemplified by the

exemption of propositions proposing amendments to the Standing Orders from the preparation and publication of a CRIA, under Schedule 2(e) as the rules of the Assembly are not considered to have an impact on children's enjoyment of their rights.

5 Meaning of “public authority” and related provisions

(6) No Order may be made under paragraph (2)(b)(i) for the purposes of making the Law Officers' Department (referred to in Article 1(1)(b) of the 1965 Law) a Public Authority duty-bearer. –

- Why has Article 5(6) been included?
Article 5(6) has been included to clearly delineate the scope of Minister's power under Article 2(b)(i) to add additional Public Authority duty-bearers to Schedule 1.
- Does this article mean that the Law Officers' Department is exempt from being a duty bearer in general and, if so, for what reason?

This is correct. The Law Officers have responsibility for providing legal advice to the Crown and to the States and have responsibility for the prosecution service in all courts, among other functions. Where legal advice is requested, the Law Officers will have regard to all matters considered relevant to the matter at hand, including provisions in any human rights treaties or instruments which form part of domestic law or are applicable in international law terms. In performing the prosecution service in the Island, the Attorney General is the 'partie publique', which involves the safeguarding of the public interest in the widest sense. It would not be appropriate to subject the Law Officers' functions, particularly in these regards, to the duties set out in the draft Law, as those functions are quite different from the public service functions undertaken by the other public authorities to which the draft Law would apply

- The Panel notes that the term 'Public Authorities' is used in various pieces of legislation including the Freedom of Information Law and Data Protection Law. In this instance the 'public authorities' listed in Schedule 1 only includes some that are also featured in the other examples. In terms of legal definition, what is meant by the term Public Authority and why does there appear to be different definitions across the various laws?

Use of the term 'Public Authorities' within the draft Children (Convention Rights) (Jersey) Law 202- should only be interpreted using the definition given in Article 5(1).

Any other Law using the term 'Public Authority' will provide the applicable interpretation and definition which should be used in that context. There is no common meaning of this term which applies across multiple laws.

- In relation to the previous question, what unintended consequences, if any, may arise from the use of the term public authorities?

In the process of consulting with prospective Public Authority duty-bearers, clarity has been sought as to whether being listed as a Public Authority duty-bearer under the draft Law, would confer the duties of a Public Authority under another piece of legislation such as the FOI Law. This is not the case. These conversations have been useful and have in one instance identified the need for an entity to determine whether the definition given in the Freedom of Information law, is applicable to them.

As the Minister is required to consult with all Public Authority duty-bearers before adding them to Schedule 1 of the draft Law, where they are then explicitly listed by name, we anticipate that there will be a good understanding of this matter amongst this group.

Further information will be provided in the Children's Rights Scheme which will accompany the Law.

(7) Where a Public Authority duty-bearer proposes to change its name –

(a) the Public Authority duty-bearer must notify the Minister of the name-change not less than 6 weeks before the change is to take effect; and

(b) the Minister must, before making an Order under paragraph (2)(b)(ii), obtain the Public Authority duty-bearer's consent. –

- How is it intended that this process of informing the Minister will work in practice?

Any Public Authority duty-bearer planning to change its name will be able to access information about how best to alert the Minister by consulting the Children's Rights Scheme which will accompany the Law. This does not preclude the option for a duty-bearer to contact the Minister's Office directly.

- How will public authority Duty Bearers be informed of this requirement and timescale?

Public Authority duty-bearers listed in the draft Law have been informed of this requirement and the six-week timescale as part of the consultation undertaken on behalf of the Minister. They have also had access to the draft Law following lodging.

Future prospective Public Authority duty-bearers will also be informed of this requirement as part of the Minister's consultation and will have access to the Law and the Children's Rights Scheme which will accompany it.

- What happens if consent is not given to amend the schedule?

Under Article 5(7)(a) a Public Authority duty-bearer which changes its name is required to notify the Minister so that Schedule 1 can be updated to reflect this. Article 5(7)(b) has been inserted to ensure that any such change is not made independently without the Public Authority's knowledge and agreement. In some instances the trading name of an entity is not the same as its legal name,

so there is a need for this be confirmed absolutely by the Public Authority in question.

If a Public Authority duty-bearer were to change its name and subsequently decline to give consent to have this updated in the Law, the Minister would seek to understand the reason for this and whether or not the entity in question wished to remain a duty-bearer under the Law.

The Minister would have recourse to the legal advice provided by the Law Officers' Department to determine his/her options if it was felt necessary to remove a Public Authority from Schedule 1, as listed under its former name.

6 Duty to have due regard – Ministerial, Elected Member and Assembly Body duty-bearers

(4) In relation to children's rights impact assessments that, in any financial year, are required in connection with decisions falling under paragraph (1), Ministerial duty-bearers must determine what those assessments must focus upon, their scope and how many of them must be prepared.

- What does Article 6(4) mean in practice?

Article 6(4) provides Ministers with discretion to determine how best to prepare Children's Rights Impact Assessments (CRIAs) for the policies they will propose in the Government Plan each year.

It is recognised that the format and structure of the Government Plan is not determined by Law and can therefore reasonably be expected to evolve over time. This provision allows for the CRIA duty to remain consistent regardless of stylistic changes to the presentation of the Government Plan.

Whilst the draft Law does not prevent a Minister from producing a CRIA for every individual new initiative or policy they propose in the Government Plan, it is expected that this approach could lead to unnecessary duplication of effort which could be avoided by looking at the child rights impact of a group of proposals. Under this provision Ministers can choose to group their policy proposals in the way that suits them best, for example by:

- Directorate/delivery area within their department(s)
- Expenditure type (E.g., revenue, capital, major project.)
- Value
- Applicable priority from the CSP
- Policy type (I.e., the three types set out in Article 6(1)(a) – (c))

An example with respect to the Minister for Children and Education might be in the area of Further Education, with a single CRIA prepared for three connected proposals:

- Firstly, capital expenditure to create and equip a new workshop;
- Secondly, revenue expenditure for additional headcount for lecturers and technicians; and,
- Thirdly revenue expenditure to support investment in that area of study and staff training.

A single CRIA addressing this group of three proposals is likely to be more meaningful and will better assist the Assembly in considering the expected impact for the young people who are intended to benefit from the investment.

(6) *The Minister may, by Order, amend Schedule 2 –*

- Why by Order? Why is the States Assembly not involved in decisions to amend exemptions?

All Members of the Assembly belong to one or more of the groups of Article 6 duty-bearers (Ministerial duty-bearers, Assembly Body duty-bearers and Elected Member duty-bearers). The Minister is required to consult with these duty-bearers before amending the Schedule of exempt decisions, meaning they will necessarily be involved in any changes to Schedule 2.

It was considered that the requirement for the Minister to consult these duty-bearers ahead of any amendment to the Schedule of Exempt decisions, will ensure that the Minister is fully appraised of the views of Members with respect to potential changes to the scope of the requirement on them to prepare and publish CRIAs.

In the event that a Member of the States wished to propose the annulment of such an Order made by the Minister, they would be able to do so under Article 11 of the Legislation (Jersey) Law 2021.

- What does consultation mean in this context?

The exact nature of any such consultation will be for the Minister at that time to determine, however it would be reasonable to expect that such a consultation could include:

- Circulation of analysis of the number and breakdown of exempt and non-exempt propositions
- Asking duty-bearers to comment on their experience of preparing CRIAs in terms of the time taken and their preparedness for this task
- Consideration of examples of exempt propositions where Assembly Members believe a CRIA should have been prepared to support understanding of the likely impact on children
- Consideration of examples of non-exempt propositions where Assembly Members believe the requirement to complete a CRIA is unnecessary
- Consideration of the Minister's proposed amendments to Schedule 2.

7 Children's rights impact assessments in respect of decisions under Article 6

(5) In a case described in paragraph (4), an Article 6 duty-bearer need not complete a full assessment prior to lodging the proposition provided the Article 6 duty-bearer –
(a) has determined that there is insufficient time to complete a full assessment; and
(b) lodges the proposition with the intention –
(i) where the proposition is listed for debate, of seeking the agreement of the States to reduce the minimum lodging period applicable to that proposition under standing orders, or

(ii) where the proposition is not listed for debate –

(A) of giving notice, in accordance with standing orders, to propose during a meeting of the States that the States debate the proposition at that meeting, and

(B) of seeking the agreement of the States to reduce the minimum lodging period applicable to that proposition under standing orders.

- What is the test for determining that there is insufficient time to complete a full assessment?

There is no specific test prescribed in this instance. The duty-bearer would need to have determined that, to their own satisfaction, that the proposition in question needs to be debated by the Assembly before the applicable minimum lodging period has expired, and that there is insufficient time to complete the CRIA full assessment prior to lodging that proposition. This determination requires the duty-bearer to be reasonably confident that the Assembly will agree that their proposition warrants a reduced lodging period, and where applicable, that the Assembly will also agree to waive the requirement for the Proposition to be listed.

- Is it required for a CRIA to be published at a later date if it is determined there is not enough time to complete it prior to lodging?

There are two circumstances in which the CRIA full assessment will need to be published by the duty-bearer:

Firstly – if the States do not agree to reduce the minimum lodging period (and if relevant waive the requirement for the proposition to be listed), or the duty-bearer does not make this request, they are then required to prepare and publish the full assessment before the proposition is subsequently debated following the ordinary lodging period. (See Article 7(6)-(7))

Secondly – if the States do agree to reduce the minimum lodging period (and if relevant waive the requirement for the proposition to be listed), and the proposition is subsequently adopted, the duty-bearer will need to complete and publish the full assessment within six weeks of the debate taking place. (See Article 7(8))

If the proposition is not adopted, there is no requirement to complete the full assessment.

- One concern raised during the pandemic was that legislation could be rushed through without the usual checks and balances in place (the Panel notes one example was in relation to the proposed Children (Placement) (Jersey) Regulations 202- which did not end up being lodged). Noting that a CRIA is not required where a Member is asking for the States to reduce the minimum lodging period, does this not by extension mean the proposition itself (if agreed to reduce the period) will not have a CRIA?

The response to the question above describes the circumstances in which duty-bearers are still required to complete a CRIA full assessment where they have sought to reduce the minimum applicable lodging period or expressed the

intention to do so. There only circumstance when completion of the full assessment is not required follows the defeat of a proposition for which the minimum lodging period has been reduced.

Article 7(5)-(8) allows duty-bearers to legitimately postpone the completion of a CRIA full assessment when they are seeking the agreement of the States to debate their proposition earlier than would normally be the case. These provisions only apply when a duty-bearer has prepared a CRIA preliminary assessment which indicates that a full assessment should then be completed. In all instances, the preliminary assessment will need to be prepared and published.

Although the draft Law does not require CRIAs to be lodged, there is an expectation that each lodged proposition (unless it relates to a proposition identified as an exempt decision) will have an accompanying CRIA which demonstrates that the duty-bearer has fulfilled their duty under Article 6.

- Is this not a ‘backdoor’ by which a CRIA is not undertaken?

In short, no. The provisions set out in Article 7(5)-(8) have been drafted to provide for a very specific set of circumstances when it is proposed that a proposition should be debated with some urgency. Duty-bearers relying on these provisions are only freed from the requirement to complete the CRIA full assessment if they are successful in securing an early debate, but the proposition is defeated. In this instance there would be little utility in requiring the retrospective completion of a CRIA full assessment for a policy which will not be implemented.

Duty bearers who do not comply with the requirements of the law would be open to the challenge from their peers in the Assembly, members of the community including children and their advocates, and ultimately to judicial review.

10 General obligations of duty-bearers

(d) apart from Elected Member duty-bearers, in every 12 month period or such other timescale as the Children’s Rights Scheme may specify prepare a report –

- (i) on how they have fulfilled the duty to have due regard over the previous 12 month period, or such other timescale as may be specified in the Scheme, and*
- (ii) publish that report not later than 6 months after the end of the 12 month period or timescale to which the report relates, or period of such other length as may be specified in the Children’s Rights Scheme.*

- Does this require Panel’s and Committees of the States Assembly to publish this information?

Yes. The Assembly Body duty-bearers are subject to the General Obligations set-out in Article 10.

- What resourcing and support is being given to the Panel’s and Committees of the Assembly to manage this process?

The Assembly Body duty-bearers will have access to:

- The Children's Rights Scheme as the statutory guidance to support the law
- Access to training and resources
- Support from Officers from the States Greffe, including Committee and Panel Officers and those in the Research and Projects Team.
- Support from Government Officers supporting the Minister to implement the Law
- External support from partners including the Officer of the Children's Commissioner and UNICEF UK.

12 Children's Rights Scheme

The Minister must, as soon as is reasonably practicable after the commencement of this Article, make a Children's Rights Scheme setting out arrangements for facilitating the fulfilment of the duty to have due regard.

- What will this scheme entail?

The Children's Rights Scheme will be the statutory guidance document which accompanies the Law to support duty-bearers to fulfil their duties under the law. This is intended to effectively function as a practical handbook and companion. The Scheme will include information about:

- Training and support available
 - The preparation and publication of CRIAs including the templates and systems duty-bearers must use
 - Ways in which due regard can be given when a CRIA is not required or completed
 - How duty-bearers can promote knowledge and understanding of the UNCRC with respect to the General Obligation described in Article 10(a)
 - Complaints handling with respect to the General Obligation described in Article 10(b)
 - How to have due regard to the views of children with respect to the General Obligation described in Article 10(c)
 - Fulfilling the reporting duty with respect to the General Obligation described in Article 10(d)
 - Any other matters the Minister considers appropriate.
- What work has been done in relation to this scheme to date and can anything be shared with the Panel for information prior to the debate?

Work undertaken to date has been focussed on defining the Children's Rights Scheme within the draft Law. There is not presently anything which can be shared with the Panel. However, we would expect this would be possible once this process has moved forward following the election.

- What funding/resourcing is required to support this scheme?

Any funding requirements associated with the Children's Rights Scheme will be met from existing resources.

16 Citation and commencement

- (1) *This Law may be cited as the Children (Convention Rights) (Jersey) Law 202-.*
(2) *Article 15 and this Article come into force 7 days after this Law is registered.*
(3) *The remainder of this Law comes into force on a day to be specified by the Minister by Order.*

- Why is this to be brought into force by Order and not an Appointed Day Act?

Successful implementation of the Law (co-ordination of which is a General Obligation of the Minister under Article 11), will be achieved by approaching the duties it introduces as a shared endeavour. This will involve the early provision of training, publication of resources and creation of forums to share key questions and learning.

The Minister will need to determine the readiness of all groups of duty-bearers and ensure the availability of appropriate training and resources to support them, prior to the enactment of the Law.

The commencement of the Law by Order enables to Minister to determine the date or dates on which it will be appropriate to enact the remainder of the Law based on an assessment of readiness without taking up valuable Assembly time to debate this via an Appointed Day Act.

- How will the Minister inform the Assembly/Public Authority Duty Bearers that the remainder of the Law has been brought into force if made by Order, noting that these are only circulated on the Order Paper?

The commencement of the remainder of the Law, or specific Articles within it, will be clearly communicated to all duty-bearers well in advance of the date in which their duties will come into effect. There is no intention to enact the remainder of the Law without securing the readiness and support of duty-bearers.

- How will this decision be publicised?

The precise detail of how this decision is to be communicated will be for the Minister to determine. It would be reasonable for duty-bearers to expect a direct communication from the Minister in addition to the announcement of this information in a news release or public awareness campaign.