

STATES OF JERSEY



DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 201- (P.18/2019): COMMENTS

**Presented to the States on 25th March 2019
by the Chairmen's Committee**

STATES GREFFE

COMMENTS

Introduction

1. Subsequent to the presentation of the Independent Jersey Care Inquiry (IJCI), the previous Council of Ministers gave a commitment within [P.108/2017](#) to appoint a Children's Commissioner and bring forward the necessary legislation to enshrine the role in Law. Deborah McMillan was duly appointed as the Children's Commissioner on 15th December 2017¹ and has been operating in shadow form whilst the legislation has been developed.²
2. [P.18/2019](#), Draft Commissioner for Children and Young People (Jersey) Law 201- (hereafter "the draft Law") has been lodged by the Minister for Children and Housing in order to create the statutory position of a Commissioner for Children as per Recommendation One of the IJCI.
3. As the Care of Children in Jersey Review Panel (hereafter "the Review Panel") was established to scrutinise the policy and legislative changes arising from the IJCI, it has been kept abreast of key developments in respect of the draft Law.
4. The Review Panel received a briefing on the draft Law from the Children's Commissioner and her Officers and Officers from the Department of Strategic Policy, Performance and Population on 3rd December 2018.³ At this briefing, the Review Panel was given an overview of the Law as it was then drafted, with the proviso that this would be presented to Council of Ministers for approval with lodging likely to take place in January 2019. Throughout the process further drafts were shared with the Review Panel, up until the final version which was discussed and subsequently agreed by the Council of Ministers. The draft Law was lodged on 12th February 2019.

Article 8 – Provision of Information to the Commissioner

5. The Review Panel is generally supportive of the draft Law, and agrees that it should be adopted in order to give the Commissioner the full powers to discharge the role in keeping with the recommendation made by the IJCI. It has, however, identified particular concerns about the drafting of Article 8 (Provision of Information to the Commissioner). It is important to note that the powers as set out in Article 8 of the draft Law are different from those which the Review Panel was originally briefed on.
6. In order to understand the rationale for the changes, the Review Panel wrote to the Minister for Children and Housing requesting an explanation for the final drafting. The Review Panel subsequently received a response from the Minister and agreed that further review of Article 8 of the draft Law was required. The Review Panel's letter and the Minister's response are appended to this report.
7. The Review Panel has drawn up the following terms of reference for its review –

¹ [Children's Commissioner for Jersey](#)

² [Children's Commissioner for Jersey](#)

³ [Care of Children in Jersey Review Panel minutes 2018 – p.12](#)

- (i) Identify and examine whether the Commissioners powers to request information (as set out in Article 8 of the draft Law) are in keeping with the recommendations made by the Independent Jersey Care Inquiry.
 - (ii) Examine and compare the powers of the Commissioner to request information in relation to similar legislation in other jurisdictions.
 - (iii) Consult with the Children’s Commissioner and her team to establish whether the powers as set out in Article 8 will allow her to effectively discharge her duties.
 - (iv) Consult with academics specialising in children’s rights law and policy to gather professionally informed views on Article 8.
8. In order to help inform its review, the Review Panel has written to the Children’s Commissioner, the Commissioners for Children and Young People in England, Wales, Scotland and Northern Ireland, academics specialising in children’s rights policy and law and local organisations working with children, young people and their families. It has also written to the Information Commissioner for his interpretation and understanding of the changes in respect of the [Freedom of Information \(Jersey\) Law 2011](#) and the [Data Protection \(Jersey\) Law 2018](#).
9. In the interest of openness and transparency, and in order to give the Review Panel adequate time to conduct the review, it has communicated to the Minister for Children and Housing and the Children’s Commissioner that it is its intention to call in the draft Law for further scrutiny under Standing Order 72 if the principles are adopted on 26th March 2019. This will give the Review Panel additional time to consider and, if deemed necessary, bring forward an amendment to the draft Law. We will be proposing that the debate continues in second reading at the sitting on 30th April 2019, assuming that the principles are adopted on 26th March 2019.

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 as additional time was required for the Chairmen’s Committee to approve them. Under Standing Order 145B(4) a Review Panel must present its report to the Chairmen’s Committee for approval, after which it is presented under Standing Order 145B(5) by the Chairmen’s Committee and not the Review Panel.

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Scrutiny Office: States Greffé

Senator Sam Mézec
Minister for Children and Housing
by Email

18th February 2019

Dear Minister,

Draft Commissioner for Children and Young People (Jersey) Law 201-

First and foremost, may I please extend my thanks to both yourself and your officers for regularly updating the Care of Children in Jersey Review Panel on the development of the Draft Commissioner for Children and Young People (Jersey) Law 201-. The Review Panel intends to discuss the legislation at its next meeting on Monday 25th February, after which it will determine whether any further review is required.

The Review Panel notes that significant changes have been made to Article 8 of the draft Law (Provision of Information to the Commissioner) from previous drafts that have been made available to us. We are concerned that the legislation, as drafted, limits the Commissioner's powers to request information under the Freedom of Information (Jersey) Law 2011. I would therefore request that the reasons and drivers behind this significant change are shared with the Review Panel.

I would be grateful of your response no later than 5pm on **Friday 22nd February** so that the Review Panel can discuss this matter further at its next meeting.

Yours sincerely,

Deputy Rob Ward
Chairman
Care of Children in Jersey Review Panel

Minister for Children and Housing



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21st February 2019

Dear Chairman

Draft Commissioner for Children and Young People (Jersey) Law 201-

Thank you for your Panel's continued support to develop the draft Commissioner for Children and Young People (Jersey) Law 201-. I am more than happy to respond to your request to outline the key drivers behind the policy objectives that have led to the current version of the draft Law.

The main policy objective of the draft Law is to bring forward legislation establishing a Children's Commissioner for Jersey with a primary function for the promotion and protection of the rights of children and young people. The scope of 'children' and 'young people' (see Article 1(1) and 2) and the nature of the 'rights' (see Article 1(2)) provides the Commissioner with an intentionally broad mandate.

The draft Law provides a number of powers in support the Commissioner's primary and general functions, including the information gathering power in Article 8. The remit of children's commissioners in other jurisdictions, and the extent of their powers, varies greatly across the UK. By comparison, the draft Law is considered to provide the Jersey Commissioner with a significant presence, comprehensive range of functions, and adequate powers to significantly progress and promote child rights in the context of a small island community and government, which is itself committed to that very same outcome.

In relation to the Commissioner's power to request information, international standards recommend that NHRIs should be accorded such powers as are '*necessary*' to enable them to discharge their mandate '*effectively*', including the power to obtain any information '*necessary*' for assessing the situations falling within their competence (see General Comment No.2, para 9). The scope and extent of powers provided to NHRIs is, therefore, to be assessed in view of their mandate, the

context in which they operate and, as indicated by '*necessary*', may be balanced against other considerations.

The Commissioner has a power to request information from relevant authorities for the purposes of its primary and general functions. Requests must be reasonable but the Commissioner will be able to request information from public, third sector and private entities for a range of purposes, for example, whether that is to enable the Commissioner to formulate advice to Government or to look into matters affecting child rights.

The draft Law will limit the extent of the obligation on relevant authorities to disclose information to the Commissioner, and limitations are intended to reflect a balance between the role of the Commissioner, and pursuit of statutory functions, on the one hand and the nature of the authorities and information which they possess, on the other. As such, while relevant authorities are not prohibited from supplying information to the Commissioner, Article 8 seeks to enable some qualification of the extent of the obligation to supply information. In the case of certain relevant authorities, enabling reliance (by reference) on the absolute and qualified exemptions set out in the Freedom of Information (Jersey) Law 2011 ("2011 Law") is considered to achieve the intended policy balance. If a relevant authority declines to supply information on a qualified exempt basis, it will need to support that refusal and the Commissioner may appeal any refusal to the Information Commissioner.

As indicated above, the framing of powers for children's commissioners from other jurisdictions varies. The panel may be interested in the two examples set out below -

1. The English Commissioner has a general broad ranging information gathering power, which is applicable generally in relation to the Commissioner's functions, in a manner similar to the Jersey Commissioner. This power is qualified to an extent in that it only applies to persons exercising functions of a public nature, and as long as the request is reasonable, and is information that the body is able to disclose lawfully to the Commissioner. However, it does not create a legal gateway that overrides other legislation, for example, where that legislation restricts disclosure of confidential information to certain specified persons or for certain purposes.
2. The Northern Ireland Commissioner information gathering power is also broad, but is limited to the function of conducting investigations into certain authorities and, for that purpose, can obtain information from such persons and in such manner, and make such enquiries, as he thinks fit.

Development of the draft Law involved review and discussion by a range of officers, including an engagement day where the scope and extent of the Commissioner's powers was considered. A focus of this consideration was the proposed extent of the Commissioner's information gathering powers, and how they applied to different parts of government and other organisations, within the Jersey context. Amendments to various elements of the draft Law were made following these

discussions. It is felt that the draft Law achieves a pragmatic policy position, which was subsequently discussed and agreed by Council of Ministers, in consultation with the Children's Commissioner.

It is accepted that there are different approaches to enabling children's commissioners to pursue their mandate, but it is equally understood that there is no uniform or ideal model. The draft Law is felt to offer a sensible legislative framework for Jersey's first commissioner with a mandate for promoting and protecting the rights of children and young people.

I hope my response is of assistance. Please let me know if my officers can be of any further support to the panel's discussions or in understanding the approach to children's commissioner information gathering in powers taken in England and elsewhere in the British Isles.

Yours sincerely



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Minister for Children and Housing

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