

STATES OF JERSEY



DRAFT CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 202- (P.107/2021): COMMENTS

**Presented to the States on 3rd February 2022
by the Children, Education and Home Affairs Scrutiny Panel
Earliest date for debate: 8th February 2022**

STATES GREFFE

COMMENTS

Introduction and background

The Children, Education and Home Affairs Panel (hereafter ‘the Panel’) welcomes the Draft Children and Young People (Jersey) Law 202- (hereafter ‘the draft Law’) which has been lodged by the Minister for Children and Education. The draft Law is the culmination of a significant amount of work that has been ongoing in response to the Independent Jersey Care Inquiry (IJCI), specifically in respect of Recommendation Five which outlined the need for the Island to significantly improve the standard of legislation relating to children. It should be noted that, within the IJCI report, it was highlighted that legislation in relation to social issues (especially that relating to children) had lagged behind many other jurisdictions.¹

The draft Law has been in development for a number of years and a number of different iterations have been drafted, culminating in the lodged proposition. The Panel has been briefed at various stages throughout the development of this draft Law and would like to place on record its thanks to the various Ministers and Officers who have ensured it is kept up to date in respect of its development. The Panel received a final briefing on the proposals on 8th November 2021 and given the importance of the draft Law, agreed that it should review the proposals to ensure they are adequate and ultimately improve upon existing legislation in respect of children and young people. The Panel wrote to a number of key stakeholders shortly after the draft Law was lodged and has received four submissions which provided views. The Panel would like to thank all those who contributed to its review.

The Panel has asked a number of questions in respect of the draft Law and the intention of these comments is to outline the areas discussed and provide clarity over certain aspects. As such, the following sections outline the key issues discussed to assist States Members during the debate.

Key issues discussed

It is understood that the draft Law is based on the following key principles:

- Creating provisions that provide a gateway to early help when it is required through arrangements for wellbeing assessments.
- Placing a duty on the Minister for Children and Education to assess the needs of children with health or development needs, children in care and care leavers along with a general duty on the Minister to provide a range and level of services appropriate to meet the assessed needs of these groups of children and care leavers.
- a duty on responsible Ministers² to make arrangements to promote cooperation to promote wellbeing and to publish a children and young people’s strategic plan.

¹ Independent Jersey Care Inquiry Report – Executive Summary

² Any reference in the draft Law to responsible Ministers means the Minister for Children and Education, Minister for Health and Social Services, the Minister for Home Affairs and the Minister for Housing and Communities.

- a duty on the safeguarding partners³ to make arrangements for safeguarding and to review child deaths.
- a range of measures concerning the wellbeing of children in care and care leavers, including corporate parenting and a framework of support for children in care and care leavers;
- a requirement on the Minister to make arrangements for independent advocacy for certain groups and establish a procedure for complaints and representation – this includes children with a health or development need, looked after children and care leavers.
- provision for the publication of statutory guidance throughout the draft Law to provide further detail and interpretation as to the requirements of the draft Law in terms of operational practice. This is intended to be supported by training.

The Panel was briefed on these key aspects and raised a number of points in relation to the draft Law as follows:

Statutory Guidance and Training

The Panel questioned whether statutory guidance would be provided as part of the new legislative framework. It was confirmed by the Minister that the guidance would be provided and that this has been written into the draft legislation for the Minister to provide statutory guidance and training in respect of the responsibilities regarding the draft Law, noting that this would be developed in the second half of 2022. It is explained that the statutory guidance, once developed, is intended to use ordinary language so that it is simple to understand. It is also noted that this guidance will be published.

The Panel questioned the Minister as to whether there would be a duty on the Government to provide training in respect of this statutory guidance. It was informed by the Minister that training would need to be provided, however, no duty to do so exists within the draft Law. In response to this the Panel raised concern that historically the provision of training has not been effective within services for children, something which was also raised in the IJCI. The Panel would also highlight that often funding for training had been cut across the Government of Jersey when identifying efficiencies. Given that training will be a fundamental part of the process, the Panel would emphasise the importance of providing meaningful training to all staff and professionals affected by the draft Law and not just circulating documents or ‘tick box’ exercises. The Panel did raise the question as to whether a duty should be included within the draft Law regarding the necessity for Government to provision this training. It was explained, however, that training would most likely be implemented through professional development routes in the various services. The Panel would raise concern that in some professions this may not be effective or even possible.

³ The safeguarding partners are defined in the draft Law and include the Chief Officers of the Government of Jersey/States Departments for which the responsible Ministers are each respectively assigned responsibility (apart from the Minister for Housing and Communities), the Chief Executive Officer and the Chief of Police.

The Children's Commissioner, in her submission, raised concern about the impact of new regulations on existing providers. It was explained that when the regulations for care homes were implemented, many third-sector providers exited from the provision as they could not meet the standards required. An example was given in relation to contact centres, noting that this is currently provided by one third sector provider. The Commissioner raised concern that, should they not be able to meet the proposed regulations, they may decide to stop providing the service. This will understandably have a profound effect on families relying on the service for family contact. The Commissioner therefore recommends that the Government, where they are not providers of such services themselves, support third sector organisations to achieve the necessary standards set out by any proposed regulations. The Panel agrees with this point raised by the Commissioner.

The Panel will continue to monitor this during its regular dialogue with the Minister and place it as a point for consideration to its successor in its legacy report.

Corporate Parenting

The draft Law sets out the duties in respect of entities that are considered Corporate Parents. The Panel is pleased to note the [comments](#) of the Privileges and Procedures Committee that commits the States Greffe to developing a corporate parenting action plan in respect of its services. The Panel would suggest that other departments and Ministers should adopt a similar approach and publish an action plan of how it intends to fulfil its obligations under the draft Law.

The Panel notes (as previously stated in the key aspects section of its comments) that the responsible Ministers under the draft Law comprise the Minister for Children and Education, Minister for Health and Social Services, the Minister for Home Affairs and the Minister for Housing and Communities. The Panel questioned whether the Minister for Treasury and Resources should be included in the list of responsible Ministers, given their role in respect of the financing and resourcing of services. In response to this question, it was explained that consideration had been given to the Ministers that would be included under this umbrella term and it was felt necessary to 'draw a line' as to the membership of this group. The Panel would suggest that this is considered further should the draft Law be adopted and amended to include the Minister for Treasury and Resources if concerns over the financing of the implementation arise.

The Panel also questioned whether a competent authority for 'putting children first' in respect of their wellbeing, was required. The Minister for Children and Education explained to the Panel that a senior leadership team to take responsibility for Corporate Parenting has been determined by the Corporate Parenting Board which includes Ministers and Director Generals (noted as the Corporate Parenting 'Gold Group'). The Panel will continue to monitor this and again raise it as something to be considered further by its successor Panel.

One key point to raise, noting the point raised by the IJCI, is the concern that people are wary of Government and consideration needs to be given to that in respect of the new legislative framework and how all the aspects fit together for timely action. The Panel would emphasise that lessons from the past need to be learned and the gaps identified within the legislation addressed, especially in relation to Corporate Parenting. The Minister and Officers explained that the strategic planning and operational systems

elements within the draft Law do allow action to be taken, lessons to be learnt and any gaps identified to be addressed if required. Again, the Panel would suggest that this will need to be monitored closely.

Provision for Children with a health or development need

It is noted that part 4 of the draft Law relates to the provision of services for Children with a Health or Development Need. During the briefing on the draft Law the Panel was informed that this would cover a child or young person with a broadly defined need. It is also noted that there is a duty under the draft Law to meet with the family and work with the parent and child or young person to address the need identified.

The Panel questioned whether an assessment for autism would fall under this legislation and further asked how this assessment process would work. The Minister confirmed that the same assessment would be used under the draft Law for a wellbeing need or a health and development need. However, it is noted that the person undertaking the assessment would vary dependent of the needs of the child. The Panel also questioned what the process would entail for a parent who believed their child had autism and required an assessment, specifically whether that type of situation would fall under the draft Law or the Education (Jersey) Law 1999. It was explained that the draft Law will not take precedence over the Education Law and, therefore, the Education Law will be the vehicle for that action.

It was explained to the Panel that a key aspect of wellbeing (as defined under the draft Law) is the ability for a child or young person to achieve. Therefore, the educational establishment involved with the child would likely be approached in the first instance in respect of an assessment. In respect of autism, targeted intervention would be necessary and that would require an initial informal assessment to be undertaken. Moreover, it is important to note that autism would fall under a health and development need and, as it is classed as a disability, it would be a protected characteristic under Jersey's Discrimination Law. Although wellbeing may incorporate a more holistic approach in respect of how it is handled under the legislative framework, a health and development need will require a more focussed approach.

The Panel notes that the draft Law does make provision in respect of these two forms of identified need which does go beyond that which is currently in place.

Communication of Statutory Guidance

One key area identified by the Panel, if the draft Law is approved, is how it will be ensured that no misunderstanding transpires with regard to the legislative framework, the guidance attached to it and in what circumstances it is to be used. In this regard, the Panel questioned how the new legislative framework would interact with the Education Law. The response given is that the new legislative framework involves wellbeing and Corporate Parenting and includes all children and young people. The Panel would emphasise the importance of ensuring that confusion and duplication of efforts is mitigated by the provision of clear guidance.

The Panel raised concern during the briefing in regard to how the information and guidance would be received by those individuals that needed to know, for example teachers. It is the view of the Panel that schools are often segmented, and information is filtered down to teachers who do not always receive the information first-hand. If the

guidance is not appropriately provisioned, there is a risk that staff (for example nursery staff, youth workers and teachers) may continue to follow the old framework/approach and nothing operationally would change, despite the new and improved legislative framework being implemented. Therefore, those individuals, in the frontline, would not be facilitating the early help that was required. The Panel would emphasise the importance of far reaching, appropriate training and guidance, which must be time accessible for staff during their established working hours and not simply an 'add-on' at the end of the working day (especially for teachers etc.).

In response, the Minister for Children and Education did highlight that the draft Law ensures that the right people are held accountable and that it provides a common-sense approach that is achievable. Whilst the legislative framework may be improved, if the implementation is not handled correctly, this could seriously impact its overall effectiveness.

The Director General for Children, Young People, Education and Skills elaborated on the fact that the draft Law provides new duties to assess and plan, however, ultimately the process is placing within legislation that which is already being fulfilled as best practice. An example was given in respect of the areas for health and development need and assessment and that those tools are already available and are not being changed. Ultimately, the new legislative framework provides a statutory basis for this practice and requires, by law, the duty to assess, plan and provide care.

Relevant Provider

The Panel asked what the term 'relevant provider' within the draft Law referred to as in its view this term does not appear to be focused. It was explained to the Panel that during a wellbeing assessment, the relevant provider could be any person directly involved with the wellbeing of the child or young person. However, in respect of a health and development assessment, a targeted assessor is required for the specialist area, for example, a social worker or someone from Children and Adolescent Mental Health Services. The Panel was further informed that discussions would occur during the process in regard to who is best placed to undertake the targeted intervention and that the intervention would have to be opted into and not forced on the child or the family. The Panel is pleased to observe that this approach, via an initial discussion, would allow for a provider to highlight whether they were suitable to lead a particular intervention and not feel trapped to provide support if they believed they were not best placed to do so.

The Director General for CYPES informed the Panel that staff working with children and young people are already expected to utilise the Jersey Children First framework. It is anticipated that the already established framework will be rolled out to assist in the implementation of the new legislative framework. It is also noted that although the framework is already established, how the framework will be used to support the draft Law will involve further discussions and training.

Improving Existing Frameworks

The Panel would suggest that the new legislative framework may present an opportunity to improve the frameworks that are already in place and ensure a shared language and framework is utilised by all professionals. The Panel suggests that the utilisation of a

standardised toolkit may benefit the process so that people understand what processes to follow under specific circumstances.

It is noted that the existing Jersey Children First framework incorporates those aspects, so it is the view of CYPES that the existing framework can appropriately be delivered across the network to support the new legislative framework. It is worth noting that the principles of the Jersey Children First framework are based on the English model, however, that the framework has been developed to specifically meet Jersey's needs.

Whilst this is welcomed, the Panel would still raise its point that without appropriate training and resourcing of that training, and a genuine commitment to long-term change in terms of culture, there exists a risk as to the success of this policy initiative. It would also state that the current Director General of CYPES is temporary and the changes being made will need long-term leadership.

Resourcing the draft Law's implementation

With regards to funding for the implementation of the new legislative framework, the Panel has questioned whether this aspect has been considered by the Minister. A properly identified resource will be necessary so that the early help process can be achieved and in turn avoid the escalation of cases. It was explained that the funding associated with this will be considered as part of the Children's and Young Peoples Strategic Plan which will in turn feed into the performance framework.

Article 14(7)

The Panel notes that the wording of Article 14(7) of the draft Law states:

Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part), but no individual is liable to make any repayment of assistance or of its value at any time when that individual is in receipt of income support under the Income Support (Jersey) Law 2007.

The Panel questioned whether a person in receipt of unconditional assistance or income support who then moved to a job which would make them ineligible for support would be required to pay back any assistance they are given under this draft Law. It was confirmed to the Panel that this wording is based on that in S17 of the Children Act 1989 and was included to allow for the possibility of (part) funding by parents or carers for child in need services for their child – but only where they could afford it. It is likely in reality to be a contribution at the time rather than a repayment.

It was further explained that the policy intent is to ensure families on income support should not have to contribute to services/targeted interventions detailed in a child's plan - so this is designed to be a protective element to ensure that means (or lack of it) would not be a barrier to the child receiving support. Therefore, it was explained that it was not the policy intention to reclaim money after the support has been provided if the person's circumstances change financially for the better. Furthermore, any services provided by the Minister under this part are designed to be separate and standalone and not form part of any income support or other financial assistance.

Other issues to consider

Voice of the Child

In the submission from the Children's Commissioner, it was highlighted that rights-based language (relating to the United Nations Convention on the Rights of the Child) in respect of children and young people has been utilised throughout the draft Law which is to be welcomed. However, one particular point has been raised in respect of ensuring that the voice of the child sits at the centre of this legislation, with an example given of where this may not have been factored in. The Commissioner explained that the term looked after children to describe children in care is something that they have stated they do not wish to be described as. The Commissioner suggests that use of the term in the legislation is reviewed and the Panel would agree with this recommendation.

Literacy and Numeracy

In the submission from Every Child Our Future (ECOF) it was stated that there is no recognition in the report of the many children who struggle though school because of poor literacy and numeracy. Furthermore, it was felt that in respect to children's rights, there is a duty on government to ensure children receive schooling that enables them to acquire basic skills and core academic knowledge.

ECOF also made the following point in respect of the duty for the Minister to appoint a virtual head and personal adviser to all care leavers up to the age of 25:

The Minister's proposed new statutory responsibility is to appoint a virtual school head and a personal advisor for each care leaver up to the age of 25. For the small number of looked after children this provision ensures that named professionals are accountable for individualised attention. No such provision exists for the children who fail to secure age-related standards in literacy and numeracy. At the moment, in the State sector, this is some 35% in reading, 46% in writing and 43% in maths. Additionally, some 13-18% of children are assessed as only having emerging skills in these areas with this group rising to over 40% of children in some schools in the town catchment area. We would argue that the Minister should formalise, either in law or in policy, a named official with the expertise and the accountability to ensure that Jersey's children achieve these basic skill levels and that the attainment numbers are not only tracked and made public but also understood and owned by our politicians.⁴

ECOF went on to suggest that the Minister should prioritise such an appointment or ensure that the Strategic Plan for children must address literacy and numeracy and provide for individualised plans where needed. The Panel would echo this point in respect of the Children's Strategic Plan.

A further point was raised by ECOF in relation to the definition of wellbeing noting an absence in the report of an estimate of how Jersey's current standing on wellbeing is assessed. It was stated it is known in the UK, that the OECD has reported declining levels of wellbeing and ECOF's assumption is that the Island's experience is similar. This is an important point to consider and the Minister should ensure that an assessment

⁴ Every Child Our Future – Submission

of wellbeing among children more broadly is routinely conducted to ensure children and young people's needs are being properly met.

Statutory Guidance and further legislation

The Panel notes that further legislation underpinning the draft Law is required in the form of Regulations. These will, however, not be brought forward prior to the election and will be a matter for the next Assembly to address. As the Panel understands, these Regulations will relate to the provision of independent advocacy and a complaints procedure for children in care and care leavers. This will all be underpinned by the statutory guidance which is expected to be developed in the new States Assembly. The Panel would recommend that its successor Panel is engaged as soon as possible in respect of these Regulations and that the statutory guidance be shared, in draft form prior to it coming into force.

Children's Rights Impact Assessment

The Panel notes that a Children's Rights Impact Assessment has been undertaken in respect of the draft Law and this has been provided to the Panel. The Panel is pleased to see that this has been undertaken and would continue to encourage all Members to ensure that these are completed in respect of propositions as a matter of best practice.

Conclusion

In conclusion, the Panel is pleased to support the draft Law in its current form. The Panel would also like to thank the Minister and his Officers for ensuring it has been briefed and informed at multiple stages in the development of the legislation. This not only ensures that key issues are identified and discussed early, but also ensures that the Panel is well briefed and able to conduct robust scrutiny. To this end, the Panel would also thank the Minister for agreeing to defer the debate to 8th February to give it further time to consider the draft Law.

It would, however, caution that this is just the first step in the legislative journey and further Regulations and statutory guidance will need to be developed should this be adopted by the States Assembly. It is vital that the successor Panel is informed as early as possible in the development of these important aspects of the overall legislative framework.

One further area to highlight are the risks associated with the implementation of this legislative framework. Whilst assurances have been given that this will be managed through training, the Panel would state that any training must be meaningful, accessible and truly engage staff and professionals so that they have a full understanding of what is being asked of them. Furthermore, this process must be resourced effectively to ensure the training reaches all those that are required to undertake it. The Panel would also echo the point raised by the Children's Commissioner that the third sector must be supported by Government during this process so that services do not fall under the burden of additional regulation.

The Panel will continue to monitor the implementation of the draft Law during its remaining time in office and will ensure that it is raised as a key point to be taken forward by its successor Panel within its legacy report.