

To: Andy Harris, Scrutiny Office

From: Dr Simon Hoffman, Swansea University

1. I am pleased to be able to make this submission to the Care of Children in Jersey Review Panel Scrutiny Review concerning the Draft Commissioner for Children and Young People (Jersey) Law 201, in particular Article 8.
2. I am providing my evidence in the capacity of Coordinator of the Observatory on Human Rights of Children. The Observatory is based at Swansea and Bangor Universities. Our work supports implementation of children's human rights by means of: research, including research engaging directly with children; working with organisations to develop and put in practice ways of embedding the UN Convention on the Rights of the Child (UNCRC) in law and policy; and, providing information on children's human rights. We are an interdisciplinary project with partners in academia and practice in the UK, Europe and globally.
3. I have had the good fortune recently to contribute my experience and knowledge on the UNCRC at an exciting time in the history of children's rights in the States of Jersey. I therefore have some familiarity with the context of the draft law.
4. This submission addresses the proposed powers to be given to the Commissioner for Children and Young People (CCYP), as set out in Article 8 of the draft law and in particular:
  - Whether the contemplated powers are consistent with the recommendations made by the Independent Jersey Care Inquiry.
  - Whether the powers will permit the CCYP to discharge her functions as set out in Article 4 and 5 of the draft law, and in particular the primary function under Article 4: to promote and protect the rights of children and young people.
5. The Jersey Independent Care Inquiry recommended that: 'the post of Commissioner for Children in Jersey be established and enshrined in States' legislation in a manner consistent with the UN Principles Relating to the Status of National Institutions (the Paris Principles).'

6. The Paris Principles are international standards adopted by the UN General Assembly (1993) to ensure the credibility of National Human Rights Institutions (NHRIs). They establish a clear expectation that NHRIs should have adequate powers of investigation to enable them to meet their mandate.
7. The requirements incumbent on all NHRIs with a mandate relating to children include: 'to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights.' This is expressly stated by the UN Committee on the Rights of the Child in its General Comment, No.5, *General Measures of Implementation of the UNCRC* (2003), at para. 65. The UN Committee in General Comment No.5 draws directly on its earlier General Comment No.2, *The role of independent national human rights institutions in the promotion and protection of the rights of the child* (2002), at para.25. In General Comment No.2 the UN Committee elaborates on the powers that should be available to NHRIs to discharge their functions. The UN Committee states that children's commissioners should be provided with 'such powers as are necessary to enable them to discharge their mandate effectively' (at para.9). These should include a power to obtain necessary information sufficient to enable a commissioner to be able to assess situations which they are competent to address.
8. Under the draft law the CCYP mandate is set out in Article 4 and 5. The situations which the CCYP would be competent to address are those set out in Article 5 of the draft law, as the General Functions of the Commissioner.
9. Article 5(h) of the draft law provides that the CCYP has the function of 'looking into, or formally investigating any matter relating to the rights of children and young people'. Article 12 of the draft law provides the CCYP with a power to require a person to give evidence or produce documents. Article 8(3) and 8(4), the draft law significantly limit the powers of the CCYP to seek information, and therefore limits their capacity to discharge the functions of the office in a manner which meets the requirements of the Paris Principles and the UN Committee's expectations as set out in its general comments (outlined above).

10. The proposal as presently drafted would do little more than confirm the powers of the CCYP to compel the provision of information as equivalent to those of the ordinary citizen. This is otiose as these powers already exist without the need for confirmation.
  
11. Worse is that the limitation imposed by Article 8 diminishes the status of the CCYP. The CCYP should be more than an ordinary citizen in the lives of children. The office should represent a powerful champion and defender of children's rights. If this is to be the case in Jersey the CCYP needs powers to compel information that go beyond those available to all other citizens.
  
12. In my view, as presently drafted, Article 8 will undermine the effectiveness of the office of the CCYP to hold the relevant authorities in the States of Jersey to account for their children's rights obligations. The proposal means public bodies will be largely exempt from what should be the CCYP's inquisitorial remit, placing a severe and in my opinion unacceptable fetter on the powers necessary to effectively safeguard children in Jersey from the harms that ensue when their rights are violated.

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March 2019

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