



## **Children's Commissioner for Jersey** Promoting and Protecting Children's Rights

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### **Children's Commissioner's position paper on the repeal of Article 79**

#### **Our position**

The Office of the Children's Commissioner supports the proposition by Deputy Le Hegarat to repeal Article 79 of the Children (Jersey) Law 2002, which currently deems reasonable corporal punishment lawful. Repealing Article 79 would give children and young people the same legal protection as adults from assault.

We also welcome the recommendations made by the NSPCC in their briefing paper to States Members, specifically the call for a public education campaign to promote positive non-violent parenting approaches and to communicate the changes made to the legislation.

#### **Background**

The Government of Jersey is a signatory of the United Nations Convention on the Rights of the Child (UNCRC), and as such is committed to protecting children's rights. Any legal provisions which allow for the violent punishment of children, on any level, are not compatible with the UNCRC and should be repealed.

Article 19 of the UNCRC guarantees all children protection from all forms of physical and mental violence.

The physical punishment of children is now completely prohibited in 54 countries around the world. Repealing Article 79 of the Children's (Jersey) Law 2002 would demonstrate a commitment to children's rights and an awareness by our government of the work being done in other jurisdictions to advance these rights in both new and existing legislation. Scotland, who are similarly considering revising their legislation to protect children from physical punishment refer to 'equal protection from assault', the choice of words highlights the fact that such changes simply bring the legal protection offered to children in line with that already offered to adults.

The Welsh Children's Commissioner has made ensuring children have the same legal protection as adults from physical assault a priority for 2019 and it is likely that England will be looking to make similar changes to their legislation.

In addition to international obligations, the case for legislative change is also supported by the wealth of evidence which shows both the physical and emotional damage to children from physical punishment; and that it is an ineffective means of improving children's behavior.



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### **Response to opposition**

In the past there have been concerns voiced around criminalising parents but this has not been the experience of those nations where similar legislative changes have been made. No new offence is being introduced and all evidence suggest that there will be little if any increase in prosecutions. It is, however, an opportunity to start a wider conversation and programme of education around children's rights and what the realisation of these rights looks like.

Parental rights are not in conflict with the rights of the child, they are recognised and supported in the UNCRC, which emphasises the unique, vital and central role for parents, families and care givers as key players in realising children's rights. For example, Article 5 States that 'States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present convention.'

The UNCRC also requires Governments to ensure that they protect the rights of families through measures that support and strengthen the relationships between family members. For example, Article 18 of the UNCRC calls on governments to provide 'appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities'.

### **Recommendation**

The recommendations of our office, based predominantly on the UNCRC and the growing body of evidence supporting non-violent discipline for a child's development are, that:

- Members support the proposition to provide children equal protection under the law
- Government embarks on an education programme around a rights-based approach<sup>1</sup> to discipline, which emphasises: non-violence; respect for children's evolving capacities; respect for children's individuality; engagement of children's participation; and respect for children's dignity.

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<sup>1</sup> Further explanation of a rights-based approach to discipline can be found at: - [https://www.researchgate.net/publication/319043854\\_What\\_is\\_Discipline\\_in\\_the\\_Age\\_of\\_Children's\\_Rights](https://www.researchgate.net/publication/319043854_What_is_Discipline_in_the_Age_of_Children's_Rights)