



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

Office of the Children's Commissioner

Brunel House
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Senator Sam Mézec
Minister for Children and Housing
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25 September 2019

Dear Senator Mézec

Re: Consultation under Article 25 of the Commissioner for Children and Young People (Jersey) Law 2019 on the prohibition of corporal punishment

Thank you for sending me your draft legislative proposals for the introduction of the prohibition of corporal punishment.

Overall, I welcome the proposals and I am supportive of your approach. As they stand, the proposals appear to fulfil the requirements of P144/2018 as adopted by the States Assembly, in that the defence of reasonable punishment has been removed from all statutory and customary provision. In addition, the introduction of a new provision expressly prohibiting corporal punishment in all settings also fulfils a requirement of the United Nations Committee on the Rights of the Child ("the Committee") as outlined in General Comment No.8 and more recently in their 2016 Concluding Observations where they called on the UK State Party (of which Jersey is a part) to:

- prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as 'reasonable chastisement';
- ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;
- strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.

These legal reforms, affording children the same protections under the law as adults, are an important means of recognising the status of children in our society as human rights holders. They represent an important milestone for children's rights in Jersey and align with your commitment to incorporate the United Nations Convention on the Rights of the Child ("the Convention") into Jersey Law.

There are, however, three issues that I would like to raise in more detail.

- 1) I understand that you have considered a number of options from different jurisdictions which have either reformed, or are going through the process of reforming, their legislation to prohibit corporal punishment in law. I note the decision to broadly model the reforms on the proposed approach currently being considered in Wales. This is to be welcomed – consultation on the proposed Welsh model appears to be overwhelmingly positive. I presume this decision is, in part, because it aligns with Law Officers’ advice that it is unnecessary to prescribe in law the exact circumstances under which an individual is able to intervene physically to protect a child. I agree with this position: such matters are, in my view, more appropriately addressed through guidance, due to their subjective nature and the potential for confusion to be created.

I therefore question why Article 36(A) of the Education (Jersey) Law 1999 is not also being repealed. From a children’s rights perspective the language in this article (namely, the term ‘reasonable force’) is particularly problematic, since the use of force against a child can never be reasonable, which is why this phrasing is not used by the Committee.

Additionally, maintaining this article would appear to be inconsistent with the logic of not being prescriptive in the 2002 Law.

- 2) While I welcome the removal of Article 35(5) of the Children (Jersey) Law 2002, I am still concerned that, even when amended, Article 35 would be inadequate in its scope, as the offence of causing harm or neglect only relates to children under the age of 16. This means that those aged 16 and 17 would not be within the ambit of the law for those offences, despite still being defined as children by the 2002 Law. This position is inconsistent with the rights guaranteed to children by the Convention. In particular, but not limited to:

- Article 19 - which requires governments to take all appropriate legislative, administrative, social and educational measures to protect a child from all forms of violence, including abuse and neglect, by their parents or anyone else who looks after them.
- Article 37 - which requires Government to take action to protect children from all cruel and degrading treatment and punishment.

Under Article 1 of the Convention, a ‘child’ is defined as ‘every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.’ The Committee draws on this definition in General Comment No.8, and in General Comment No.13 when defining ‘caregivers’ for the purposes of Article 19. Here the Committee states that ‘... all human beings below the age of 18 years are nonetheless “in the care of” someone or should be.’

In its 2016 Concluding Observations of the UK State Party, the Committee recommended that the UK Government revise the Children and Young Persons Act (1933) in order to protect all children under 18 years from child abuse and neglect. The principle of the Committee’s recommendation is applicable to the Government of Jersey, and as such, Article 35 of the Children (Jersey) Law 2002 should be amended accordingly.

- 3) Finally, while I appreciate that, in order to satisfy Article 25 of the Commissioner for Children and Young People (Jersey) Law 2019, you are only required to formally consult me when bringing forward an enactment, I would nonetheless like to be assured that part (c) of P.144/2018 is also being fulfilled.

Research, such as the 'Equally Protected?' report¹, has shown that legal measures alone are not enough to effect the cultural change in society that is required to protect children from violence. Effective public awareness campaigns and guidance should also be put in place to complement and reinforce legal reforms.

Awareness campaigns and guidance should:

a) *Clearly articulate the legal changes and their purpose*

The main aim of the legal changes relating to corporal punishment is not to criminalise or prosecute people. Rather, the purpose is to uphold children's rights and recognise their equal status as rights holders by being clear that, as is the case for adults, violence against children, in any form, is no longer acceptable or lawful in any setting, including the privacy of the home.

b) *Provide effective strategies for parenting and discipline*

These strategies should promote positive, respectful and non-violent methods of parenting and discipline in all settings. This should be grounded in the best interests of the child and their right to dignity, equality and respect.

Importantly, these strategies should not only focus on physical forms of violence and punishment but also non-physical forms, which include 'mental violence' and punishment. The Committee, in General Comment No.13, describes mental violence as '*psychological maltreatment, mental abuse, verbal abuse and emotional abuse and neglect*'. It also states, in General comment No.8, that '*there are other non-physical forms of punishment that are also cruel and degrading.... these include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules a child*'. The committee is unequivocal that non-physical violence and punishment is incompatible with the Convention.

c) *Broadly disseminated at all levels of society*

We note and welcome your previous comments to P144/2018 acknowledging the need for awareness-raising guidance and training for all parents. Clearly, parents are a key demographic, and your suggested approach of into existing programmes, such as the Positive Parenting Programme, is a sensible starting point but will not be sufficient on its own, as not all parents will be reached through the programme. Therefore, a proactive campaign targeting all parents, particularly those who are harder to reach, in ways that are accessible, both in terms of language and location, is crucial.

In addition to parents, all relevant groups and professionals working with children need to be aware of the legal changes and alternative strategies. If they are adequately informed, then they will be able to apply those strategies when directly working with children and young people, and will also be able to play an integral part in any awareness-raising campaign. For those professionals more directly affected by the changes, existing guidance will need to be updated or new guidance developed. For example, I note that the Lord Advocate in Scotland has stated his intention to update his guidelines on the investigation and reporting of allegations of assault by parents on children, should Scotland's legislation change. He is currently in discussions with Police Scotland about the parameters of those guidelines. Similar consideration may need to be given here in relation to the Attorney-General's code and guidelines on prosecution.

¹ Equally Protected? A review of the evidence on the physical punishment of children - <https://learning.nspcc.org.uk/media/1117/equally-protected.pdf>

The general public needs to be made aware of the changes to ensure that wider cultural change and support. The local media could play an active role in raising awareness, and should be encouraged to do so.

Importantly, children and young people themselves need to be made aware of the changes and of their rights in this area. The Convention requires governments to do this. Campaigns should be informative and accessible and developed according to the evolving capacities and maturity of children.

I hope you find my observations and suggestions helpful. I would be happy to discuss this further, should you wish.

Yours sincerely

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