

19-21 Broad Street | St Helier
Jersey | JE2 3RR

Deborah McMillan,
Children's Commissioner for Jersey,
Brunel House,
St Helier,
JE2 3RG

14th October 2019

Dear Commissioner,

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 your letter dated 25 September 2019 regarding the draft Children and Education (Amendment) (Jersey) Law 201- (the "draft Law"). I have now discussed your comments with policy officers who worked on bringing forward the draft Law, and with the Minister for Education and senior officers in her Department.

I welcome your comments as to the draft Law fulfilling the proposition '*Children (Jersey) Law 2002: repeal of Article 79*' ("P.144/2018") and its fulfilment of recommendations made on the issue of corporal punishment by the UN Committee on the Rights of the Child (the "UN Committee"). As Minister for Children I am committed to ensuring that we, as a government, and as a community in the broader sense strive toward compatibility with the United Nations Convention on the Rights of the Child (the "UNCRC"). I look forward to engaging with you further in this regard. I am grateful also for your detailed points concerning certain aspects of the draft Law, to which I have responded in turn below.

Comment (1)

I welcome your comments concerning the development of the draft Law, in particular the usefulness of recent legislative developments in Wales in offering a degree of precedent for how our legislation might fulfil the agreed proposals in P.144/2018. It continues to be important for Jersey to be cognisant of legislative developments elsewhere in determining how best it can legislate for children and young people here.

The question of whether the draft Law should include provision prescribing the permissible circumstances for physical intervention for the protection of a child was considered during policy discussions in response to P.144/2018. Regard was had to legislative precedent from other common law jurisdictions, particularly New Zealand, while also taking account of the practical impact such a provision might have for children and parents. Our conclusion was that a prescriptive provision could, in practice, prove problematic with potential unintended consequences for the rights of children and the role of parents as the guardians of their child's safety and wellbeing. I understand there are existing customary rules around physical interventions, applying to children and adults, recognising the need for intervention in certain circumstances and the requirement for proportionality in doing so. In developing the draft Law, we were conscious of wanting to avoid cutting across these established principles. I note that you are in agreement with this approach.

P.144/2018 tasked the Council of Ministers, and I in turn, to bring forward the necessary legislative amendments to repeal Article 79 of the Children (Jersey) Law 2002 (the "2002 Law") and deal with any other statutory or customary provision "*of similar effect*". The draft Law fulfils P.144/2018 in this respect: it replaces Article 79 of the 2002 Law but also makes provision addressing Article 35 of the 2002 Law, Article 36A of the

Education (Jersey) Law 1999 (the “1999 Law”) and the customary Law, those provisions being concerned with the concept of reasonable corporal punishment of children. However, P.144/2018 was limited in its scope - focussing only on customary and statutory provisions for using physical force against children as a form of punishment – and did not provide a broader mandate for addressing other statutory or customary provision that engage Article 19 UNCRC.

Article 36A of the 1999 Law was introduced to provide a statutory framework around the use of restrictive physical interventions (“RPIs”) in schools, in instances where there might be cause for intervention from teaching staff and others. The policy rationale behind Article 36A is explained further in the proposition for the amendment which introduced that provision, P.56/2017, and the move to legislate for RPIs was seen, at the time, as a positive and affirmative move.

That said, a review of the 1999 Law is firmly within the scope of the Children’s Legislation Transformation Programme (“CTLP”) and is referenced in phase 1 of the schedule of work which I published earlier this year¹. That review will be undertaken under the remit of the Minister for Education, Senator Vallois, with a view to updating, revising and clarifying the 1999 Law, and compatibility with the UNCRC will be a guiding principle in that work. I have raised this specific point with Senator Vallois. She has confirmed that a review of Article 36A of the 1999 Law, and its compatibility with Article 19 UNCRC, will be carried out. In doing so it will be noted that the UN Committee, in General Comment No.8, at para 15, recognize –

“that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control”

It will also be recognized that Article 28(2) UNCRC requires us to ensure that all appropriate measures are taken to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the UNCRC. There will, of course, be consultation with you and colleagues from the Education Department as this work develops.

Comment (2)

Your comments regarding Article 35 of the 2002 Law – as to the extending the scope of that provision to cover children above 16 years of age – are welcomed. As mentioned above, P.144/2018 was limited in its scope and, while consideration of the extension of protection from harm and neglect provisions to all children would have been beyond that scope, it is recognized that all legislative provision for children in Jersey must accord to the UNCRC definition of the ‘child’. We are, as a government, working toward legislative reform in other areas, for example in raising the age of marriage, in order to align Jersey law with the UNCRC in this regard.

The work of the CTLP group includes a review of the 2002 Law. While the focus of that work is on specific issues, such as the introduction of ‘child in need’ provision, I will task officers in the CTLP group to consider a revision to Article 35 of the 2002 Law as part of their broader work.

Comment (3)

I am pleased to be able to offer you the assurance sought in your letter as regards paragraph (c) of P.144/2018.

A programme of public awareness-raising will be undertaken before new legislation comes into force, designed to ensure that residents are aware of the nature of the legislative changes and to highlight where

¹<https://www.gov.je/Government/Departments/StrategicPolicy/RespondingtoIndependentJerseyCareInquiry/Pages/ChildrensLegislation.aspx>

individuals with concerns can receive advice and support. The content and provision of this awareness-raising guidance will be developed and led by the Safeguarding Partnership Board. Accompanying social media content, including an awareness-raising video will be developed.

Existing parental support programmes offered by the Government of Jersey will cover the new legislative changes and will ensure that parents have access to training in positive parenting techniques. This will be delivered through the “Triple P” Positive Parenting Programmes. This is a universal service provided at no cost to participants. The “Triple P” Positive Parenting Programmes are currently delivered, with the costs of the trained family support workers covered under existing budgets.

Relevant heads of services such as the Police, Children’s Services, Health Service, Schools and Family Nursing and Home Care will be kept informed of the timescales for implementation and will ultimately be responsible for ensuring that government services are in a position to respond to changes in legislation.

I would like to thank you again for your submission concerning the draft Law and I do hope that my responses to your comments provide the clarity and assurances sought.

Yours sincerely

Senator Sam Mézec
Minister for Children and Housing

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