



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

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# Indirect Incorporation of the United Nations Convention on the Rights of the Child: Position Paper

## Who we are

The Children's Commissioner for Jersey was established to promote and protect children and young people's rights. The Children's Commissioner works for every child and young person in Jersey who is:

- Under the age of 18
- Under the age of 25 if they have a disability, have been care experienced or have been sentenced under the Young Offenders Law
- Placed off-island for their care or treatment

The Commissioner for Children and Young People (Jersey) Law 2019 established the role of the Commissioner, and set out the powers and actions the Commissioner can take. These include:

- Providing children and young people with information about their rights.
- Supporting children and young people to complain.
- Working with people and organisations who provide services to help them to solve any problems or complaints at the earliest opportunity.
- Asking for information from people providing services to children and young people.
- Visiting places where children and young people are cared for, accommodated or receive services and speak to them.
- Investigating cases where the rights of children and young people have not been respected and suggest how things could be improved.
- Going to court for children and young people in certain circumstances.

Further information on the role of the Commissioner and the wider office is available on our website at [www.childcomjersey.org.je](http://www.childcomjersey.org.je)

## Summary

The Government of Jersey is consulting on how to better protect children's rights in Jersey. This paper summarises our response to the consultation.

The United Nations Convention on the Rights of the Child (UNCRC) is a powerful piece of international law which sets out the minimum standard for rights protections that the State has an obligation to uphold. It was written 30 years ago and almost every country has signed up to it. The

UNCRC was extended to Jersey in 2014, but it is not yet been brought fully into Jersey law through a process called incorporation.

We are supportive of steps to better protect children's rights, however, we are clear that the proposal being consulted on does not meet the requirements as set out by the United Nations Committee on the Rights of the Child. We need to do more to make rights real in Jersey.

Our key points are as follows:

- We welcome this step forward in embedding children's rights considerations into decision making in Jersey, however this is the first step and not the end of the journey. Full and direct incorporation of the UNCRC is necessary to protect, respect and fulfil the rights of children and young people in Jersey.
- The Government of Jersey has pledged to put children first. Full incorporation is a tangible, and concrete action that would put those words into practice.
- Children and young people know their rights; we need to make these a reality in Jersey
- Child Rights Impact Assessments (CRIAs) must be mandatory for everyone working on behalf of the State and they must be consistent in order to mainstream rights protections. They should be published to allow for scrutiny and transparency.
- Jersey has a real opportunity to show leadership on children's rights protections. Full and direct incorporation, alongside a duty to consider children's rights throughout the decision-making process through Child Rights Impact Assessments would demonstrate that Jersey can be a leader internationally on protecting, respecting, and fulfilling children's rights.

## **The UNCRC and Incorporation**

The United Nations Convention on the Rights of the Child (UNCRC) was written because states recognised that children need special measures of protection. This is for many reasons, but recognises that adults have choices available to them where often children and young people do not. For example, adults are able to vote, to earn money and have their own home. Children and young people need to have their rights protected to make sure that they still have a say in decisions that affect them, and that all children are able to enjoy their childhood.

Children's rights are universal. All children should have them, no matter who they are or where they are from. The rights are also interdependent, and link together in important ways. For example if a child is not able to go to school because of their health, their right to education is affected by their access to their right to health. This is why it is so important that all children's rights in the UNCRC are brought into law in Jersey.

The UNCRC was extended to Jersey in 2014. The obligations however have yet to be brought fully into Jersey law through the incorporation of the UNCRC.

Incorporation is the process by which international human rights treaties becomes part of domestic law. Full and direct incorporation would mean the whole Convention becomes part of Jersey's law, meaning that the State, including public bodies, would have to respect, protect and fulfil children's

rights in Jersey. It would also provide for full accountability and access to a remedy, allowing these rights to be relied upon in courts.

The Government of Jersey's consultation proposes establishing a process for which children's rights are considered during decision making processes. It is being referred to as indirect incorporation, as it would provide that the State, including Ministers and public bodies, consider the UNCRC when making decisions. However, these protections are not enforceable in a court of law, and therefore do not provide the full and robust protections that are required under international law.<sup>1</sup> This must include accessible complaints mechanisms, access to advocacy and legal representation as well as clear information using child-friendly language.

Children and young people in Jersey know their rights. We know this from our conversations with children and young people, and the Rights Respecting Schools programme which is in almost every school on the island and teaches children their rights. We need to make these rights a reality by putting them in law.

Protections need to be in place now through protecting the whole Convention at once in Jersey law. Changes to the law have been very slow, such as the recent change to protect children equally against assault in Jersey. This was an important step forward but progress is too gradual, and without protecting the whole Convention, some rights could get lost.

The consultation asks about Child Rights Impact Assessments (CRIAs). CRIAs are a tool which would support professionals to consistently look at how their services or decisions would affect children's rights, and allowing them to have due regard to their rights when making decisions. We are clear that Child Rights Impact Assessments (CRIAs) should be used by everyone who works on behalf of the state. This includes the government and services such as the police and schools, as well as States Assembly Members when making laws. It is important that professionals are trained properly so that they can use this tool, and that CRIAs are published so that children and young people can understand why decisions were made, and how they can get involved. It builds in transparency, raises awareness of children's rights and allows for better conversations and dialogue.

Overall, we welcome the step forward to embed rights protections in the systems and structures which impact on children's enjoyment of their rights, however it is imperative that this is the first step towards full and direct incorporation. The duties outlined in the UNCRC were enshrined 30 years ago, and are not aspirational but international minimum standards. Jersey reiterated its commitment to children's rights through extending the Convention in 2014, and the Government's recent pledge to put children first. Mandatory CRIAs along with full and direct incorporation is a tangible, and concrete action that would put those words into practice, and make rights a reality for children in Jersey.

### **Further Information**

For further information, please see our full response on our website at [childcomjersey.org.je](http://childcomjersey.org.je) or contact Sarah McDermott at [Sarah@Childcomjersey.org.je](mailto:Sarah@Childcomjersey.org.je)

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<sup>1</sup> Paragraphs 24 – 25, General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child CRC/GC/2003/5