



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

LEGISLATIVE GAP ANALYSIS

COMMISSIONER'S FOREWORD

This report is the culmination of a year's work – work that has required both a great deal of patience and expertise on the part of its authors. But their efforts have been worth it, because what we now have in these pages is a comprehensive, independent analysis of the extent to which Jersey legislation complies with the United Nations Convention on the Rights of the Child (UNCRC). For the first time, we have a clear understanding of where our laws meet the expectations of the United Nations Committee, and where they continue to fall short of them.

However, this report should not be viewed as a document that seeks to attach fault or blame for any lack of compliance with the UNCRC. Instead, it should be seen as part of an ongoing collaboration between my office and the Government of Jersey, the intended outcome of which is to achieve genuine progress – as opposed to nominal, tick-box compliance – with both the letter and the spirit of the UNCRC.

In order to do that effectively, though, we need to have an accurate map. This document provides that. It illuminates the areas of our statute which we can already chalk up as 'wins' in our journey along the continuum of compliance, and it also exposes those parts of the Island's legislation that are most in need of attention.

I am thinking, in particular, of aspects of the Children (Jersey) Law 2002, as well as other major pieces of legislation relating to education, healthcare, adoption, young offending, and many other areas.

Thanks to the tireless work of Simon Hoffman and Sally Sellwood at Swansea University's Observatory on Human Rights of Children, who have spent the past year sifting through hundreds of legal documents, we now have a reliable touchstone for our elected representatives to use when debating propositions. Or, to put it another way, we have an overview of the changes that will be required if the Government is to truly deliver on its commitment to Putting Children First.

Now that we have such an overview, it is my recommendation that the Government revisits its transformation programme for children's legislation, which was set at a time before any independent and thorough gap analysis had been undertaken.

Reliable, detailed information is essential for good decision-making. The Council of Ministers were very clear on this point when they first asked me to deliver this piece

of work. And I am confident that, in the same spirit of informed decision-making, they will now want to act on the information that is set out here.

From my point of view, I will simply say that I made three clear undertakings in 2018 when I took up my post as the Island's first Children's Commissioner. I said that I would:

- develop and embed a culture of children's human rights in Jersey;
- form a strong, resilient and inspiring organisation which promotes and protects children's human rights;
- make sure children's human rights are at the centre of laws, policies and practice in Jersey.

It is not only on the last of these strategic aims that this report is focussed, but on all three. Because for us to truly embed a culture of children's human rights in the Island, we must reflect our commitment as signatories to the UNCRC in both our policy-making and our law-making.

Of course, this cannot happen overnight. Compliance with the UNCRC is a continuum – it does not happen from one day to the next; it happens incrementally. But careful consideration of the articles of the UNCRC is something that we can incorporate right away into the services that we deliver and the policies that we debate.

This is why I would like to see the introduction of a Child Rights Impact Assessment (CRIA) in the process of drafting and debating States propositions. The Government of Jersey has already begun piloting the use of a CRIA approach, and it makes sense for that to become a permanent fixture as we strive to address the findings of this report.

This would not be a straitjacket for States Members, nor would be it a tactic for crowbarring in consideration of children's rights where they are not thought to be relevant. It would merely be a way of ensuring that the UNCRC, which was formally extended to Jersey six years ago, becomes a natural and permanent part of our political and social consciences.



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Commissioner for Children and Young People, Jersey

LEGISLATIVE GAP ANALYSIS

relating to

STATES OF JERSEY



FINAL REPORT

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CONTENT

GLOSSARY AND ABBREVIATIONS	6
STATES OF JERSEY LAW: SHORT FORM.....	7
BACKGROUND	8
NOTE ON RECOMMENDATIONS.....	8
NOTE ON PROGRESSIVE REALISATION	9
ONGOING DEVELOPMENTS	10
METHODOLOGY	10
Developing an Analytical Compliance Framework.....	12
HOW THE REPORT IS SET OUT.....	14
DISABILITY, BASIC HEALTH AND WELFARE	16
Areas Covered.....	16
Right to Life, Survival and Development (Article 6)	17
Findings: Article 6	24
Childcare Services and Facilities (Article 18.3).....	25
Findings: Article 18(3).....	26
Disabled Children (Article 23)	27
Findings: Article 23	28
Health and Health Services (Article 24).....	28
Findings: Article 24	33
Social Security and Standard of Living (Articles 26 and 27)	33
Findings: Articles 26 and 27	37
Protection from Harmful Substances (Article 33).....	38
Collated Findings: Disability, Basic Health and Welfare	38
EDUCATION, LEISURE AND CULTURAL ACTIVITIES	41
Areas Covered.....	41
Education (Article 28)	42
Findings: Article 28	50
The Aims of Education (Article 29)	51
Findings: Article 29	55
Leisure and Cultural Activities (Article 31)	55
Findings: Article 31	58
Collated Findings: Education, Leisure and Cultural Activities	58
FAMILY ENVIRONMENT AND ALTERNATIVE CARE	60
Areas Covered.....	60
Parental Responsibility and Guidance (Articles 5 and 18(1) and (2))	61
Findings: Article 5 and 18(1) and (2).....	64

Separation From Parents (Article 9)	64
Findings: Article 9	72
Family Reunification (Article 10)	73
Findings: Article 10	74
Illicit Transfer and Non-return of Children (Article 11)	74
Children Deprived of Family Environment (Article 20)	75
Findings: Article 20	82
Adoption (Article 21)	82
Findings: Article 21	83
Periodic Review of Placements (Article 25)	84
Findings: Article 25	86
Recovery of Maintenance (Article 27(4))	86
Collated Findings: Family Environment and Alternative Care	87
SPECIAL PROTECTION MEASURES	89
Areas Covered	89
Children Outside their Country of Origin, Children Seeking Refugee Protection, Unaccompanied Asylum-seeking Children, Internally Displaced Children, Migrant Children and Children Affected by Migration((Article 22)	90
Findings: Article 22	99
Children Belonging to a Minority or an Indigenous Group (Article 30)	100
Findings: Article 30	102
Children in Situations of Exploitation etc (Article 32-36)	102
Findings: Articles 32-36	104
Deprivation of Liberty (Article 37(b)–(d))	104
Findings: Article 37(b)–(d)	106
Children in Conflict with the Law, Child Victims and Witnesses of Crimes and Juvenile Justice (Article 40)	107
Findings: Article 40	116
Collated Findings: Special Protection Measures	117
APPENDIX 1	120
APPENDIX 2	166

GLOSSARY AND ABBREVIATIONS

AAP	Adult Advisory Panel
AHG	Affordable Housing Gateway
Care Standards	Jersey Care Commission Care Standards: Children and Young People's Residential Care
Charging Policy	Residents and Non-Residents Charging Policy
Commissioner	Office of the Children's Commissioner for Jersey
Committee	Committee on the Rights of the Child
Convention	UN Convention the Rights of the Child
ECHR	European Convention on Human Rights
FGM	Female Genital Mutilation
GACC	Guidelines for the Alternative Care of Children
GC	General Comment
	<i>A link to access General Comments online is provided at footnote 7</i>
GoJ	Government of Jersey
Hague Convention	Hague Convention on the Protection of Children and Co-Operation in Respect of Inter-Country Adoption
ISS	Independent Safeguarding and Standards
JIR	Jersey Immigration Rules
LGA	Legislative Gap Analysis
Reporting Guidelines	Treaty Specific Reporting Guidelines
	<i>A link to access the Reporting guidelines online is provided at footnote 3</i>
SoJ	States of Jersey
UASC	Unaccompanied Asylum-Seeking Child
UNCRC	UN Convention the Rights of the Child
	<i>A link to access the UNCRC online is provided at footnote 1</i>

STATES OF JERSEY LAW: SHORT FORM

Adoption Law	Adoption (Jersey) Law 1961
Children Law	Children (Jersey) Law 2002
Discrimination Law	Discrimination (Jersey) Law 2013
Education Law	Education (Jersey) Law 1999
Employment Law	Employment (Jersey) Law 2003
Health Insurance Law	Health Insurance (Jersey) Law 1967
Housing and Work Law	Control of Housing and Work (Jersey) Law 2012
Human Rights Law	Human Rights (Jersey) Law 2000
Income Support Law	Income Support (Jersey) Law 2007
Marriage Law	Marriage and Civil Status (Jersey) Law 2001
Mental Health Law	Mental Health (Jersey) Law 2016
Prison Rules	Prison (Jersey) Rules 2007
Regulation of Care Law	Regulation of Care (Jersey) Law 2014
Sexual Offences Law	Sexual Offences (Jersey) Law 2018
Social Security Law	Social Security (Jersey) Law 1974
Young Offenders Law	Criminal Justice (Young Offenders) (Jersey) Law 2014

BACKGROUND

The States of Jersey (SoJ) ratified the UN Convention on the Rights of the Child (UNCRC or Convention)¹ in 2014. In December 2017, the SoJ Assembly approved a proposition requiring the Chief Minister, in conjunction with the Office of the Children's Commissioner for Jersey (the Commissioner) to bring forward the necessary legislative changes to give further effect in Jersey Law to the Convention, in order to support the better realisation of children's human rights.

The Government of Jersey (GoJ) has agreed to introduce legislation which will integrate Convention rights as directive principles for legislation and policy using a 'due regard' model (requiring the GoJ to pay close attention to the Convention in the exercise of functions). The GoJ has deferred a decision on 'full and direct' incorporation of the Convention which would enable children (or their representative(s)) to bring a claim if Convention rights are breached.

The decision to defer 'full and direct' incorporation is to allow time for research to examine the potential impact on domestic legislation, an aspect of which is to understand the current state of compliance of SoJ legislation with the UNCRC, and the extent of transformation of the statute book that may be required to bring about compliance. The GoJ requested the Commissioner carry out a Legislative Gap Analysis (LGA) to support this process. In June 2019, the Commissioner approached the Observatory on Human Rights of Children at Swansea University to carry out the LGA. The research commenced in August 2019.

NOTE ON RECOMMENDATIONS

This report is intended for use by the Commissioner to inform recommendations to the GoJ for reform of SoJ legislation to promote better implementation of, and compliance with the UNCRC. While it was initially contemplated that this report would include recommendations, this was revised following discussion with the

¹ The Convention is available here:

<<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>> accessed 5th August 2020.

Commissioner and the Commissioner's Adult Advisory Panel (AAP) after the research had commenced (August 2019). As recommendations will need to take account of context, timing and a range of political and policy factors, and priorities not covered by the research underpinning this report, it was decided that any recommendations should be left to the Commissioner to determine following discussion with the AAP.

NOTE ON PROGRESSIVE REALISATION

Many of the rights discussed in the following chapters may be categorised as 'social, economic or cultural rights'. Article 4 of the Convention requires States to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention'. The article goes on, '[w]ith regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources...'. This is commonly referred to as 'progressive realisation', and is only applicable to economic, social and cultural rights.

The core requirement of progressive realisation is to take concrete steps (appropriate measures) toward the full realisation of economic, social and cultural rights, while recognising that the realisation of these rights may be in part determined by resource availability or scarcity (where resources may be financial or other resources).² Progressive realisation recognises that States may need to implement economic, social and cultural rights over time as resources become available.

The concept of progressive realization is often misinterpreted as permitting States to avoid any action to give effect to economic, social and cultural rights until they have sufficient resources. This is incorrect. While the full realisation of rights may need to be achieved over time as resources permit, the UNCRC imposes an immediate obligation to take appropriate steps to move towards the realisation of economic,

² For more on progressive realisation see:
<<https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>> accessed 15th September 2020, chapter 7.

social and cultural rights. A lack of resources does not provide justification for inaction or indefinite postponement of measures to implement these rights. States must demonstrate that they are making every effort to improve the enjoyment of economic, social and cultural rights, contained in the UNCRC, even when resources are scarce. A State should ensure that everyone has access to, at the very least, minimum levels of rights, and target programmes to protect marginalized and disadvantaged children.

ONGOING DEVELOPMENTS

We understand from discussions with the Commissioner and the GoJ that the GoJ is undertaking a Legislative Transformation Programme. This may result in changes to legislation which will address a number of gaps identified in this report, where current SoJ legislation falls short of meeting the expectations for compliance with the UNCRC. We have also been informed that the GoJ is reviewing policy in relation to children in several fields covered by the research, something which may result in changes that negate the need for legislation in some areas covered in this report. Whilst we have not taken likely future developments into account for the purposes of the LGA, it is envisaged that they will form part of the context to inform any recommendations for reform of the SoJ statute book determined by the Commissioner in discussion with the AAP.

METHODOLOGY

The research developed and applied an ‘analytical compliance framework’ to review current SoJ legislation for compliance with the UNCRC. Ethical approval was obtained from the Hillary Rodham Clinton School of Law Ethics Committee prior to commencement of the research. Time and budgetary constraints meant it was only possible to apply this framework to analyse SoJ legislation in a limited number of thematic areas. These were purposively selected from amongst the thematic clusters established by the Committee on the Rights of the Child (Committee) for the

purposes of periodic State reporting as set out in the Committee's Treaty Specific Reporting Guidelines (Reporting Guidelines).³

The thematic clusters established by the Committee for State reporting purposes are: General Measures of Implementation of the UNCRC; Definition of the Child; General Principles; Civil Rights and Freedoms; Violence Against Children; Disability, Basic Health and Welfare; Education, Leisure and Cultural Activities; Family Environment and Alternative Care; and, Special Protection Measures.

The thematic areas examined for this research are: Disability, Basic Health and Welfare; Education; Family Environment and Alternative Care; and Special Protection Measures. These were selected after discussion with the Commissioner and AAP and were identified as areas offering the greatest potential to reveal gaps in SoJ legislation with greatest impact for children in Jersey.

Our decision to examine areas identified for State reporting purposes was in order to align with the priorities for implementation highlighted by the Committee in the Reporting Guidelines, and for comparability with the SoJ Preliminary Report (Appendix 1) prepared in advance of SoJ ratification of the Convention in 2014, which also reports by thematic area, as well as the Concluding Observations and recommendations issued by the Committee to the UK following periodic reporting.⁴

The focus of this LGA is legislation. While it was intended at the outset that the research would not examine policy or practice in the thematic areas identified, it soon became apparent that some consideration of the policy context would be necessary to understand how SoJ complies with the UNCRC. However, throughout this report we have sought to make clear where legislation, rather than policy, might be anticipated in order to give proper effect to Convention rights.

³ Committee on the Rights of the Child, *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child*, CRC/C/58/Rev.3: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/58/REV.3&Lang=en> accessed 24th July 2020.

⁴ In particular the 2016 Concluding Observations: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en> accessed 5th August 2020.

Developing an Analytical Compliance Framework

The LGA was undertaken in two stages. First, we set out to establish where legislation might be anticipated in order to comply with the UNCRC in each of the thematic areas selected for analysis. A review of relevant literature failed to reveal a suitable method or combination of methods which we could adopt to undertake the LGA, which meant a bespoke methodology had to be developed. This began with the informed assumption that neither the Convention nor the Committee's jurisprudence (written output) prescribes the precise measures or steps States are required to adopt in order to give effect to children's rights in accordance with the obligation set out in Article 4 of the UNCRC.⁵ Instead the Convention itself, and the Committee suggest that States should adopt a range of legislative, administrative and other measures to give effect to Convention rights.⁶ We therefore developed a compliance framework to analyse when legislation might be anticipated as an appropriate measure of implementation of the Convention.

The compliance framework was developed thematically (by area) to take account of the expectations of international law for implementation of the Convention, drawing on relevant articles of the UNCRC, and the Committee's jurisprudence, with a focus on guidance provided in the Committee's General Comments.⁷ As relevant we also took account of other materials issued by international bodies on implementation of

⁵ Article 4 reads:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

⁶ See, in particular: Committee on the Rights of the Child, General Comment No.5, 2003. Available here:

<https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11> accessed 5th August 2020.

In addition to Article 4, a number of articles in the Convention refer to 'legislative measures' amongst the steps States will need to take to give effect to children's rights (see, e.g. Articles 19 and 32).

⁷ General Comments are published by the Committee on the Rights of the Child as guidance on implementation of the UNCRC. They may be found here:

<https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11> accessed 5th August 2020.

human rights.⁸ In reliance on these materials, we sought to identify where, in order to give effect to the UNCRC in each thematic area, and in relation to particular issues arising within each thematic cluster, it may be said that a State is expected to include legislative measures amongst the measures of implementation of the Convention. Legislative measures might be:

- Primary legislation (SoJ Laws) or secondary legislation (SoJ regulations and orders).
- Legislation which directly implements particular Convention rights.
- Framework or enabling legislation, under which regulations, orders or policy may be introduced to give effect to Convention rights.
- Sectoral legislation, focusing on a particular area, e.g. education, housing.

In the second stage of the research we applied the compliance framework developed for each thematic area to determine gaps in SoJ legislation in that area. It proved challenging to apply the compliance framework as it was not always straightforward to determine whether, and if so what SoJ legislation and policy is in place in relation to each of the thematic areas. While the Jersey Law website is comprehensive and an excellent resource,⁹ it assumes prior knowledge of relevant legislation. Following discussion with the Commissioner, the GoJ and AAP it was decided that we would have access to relevant GoJ officials to receive direction on existing legislation and policy.

We are grateful to GoJ officials for their assistance.

Note on accessible information

At times we have found navigating SoJ information resources to determine how children's rights are protected and promoted to be a difficult exercise. It is often unclear the precise basis upon which it is claimed that rights are protected (as in the Preliminary Report (Appendix 1)), or it is not apparent from source documents or online information whether an issue is dealt with in legislation or policy, or both. This

⁸ Relevant documents are referred to in the thematic chapters.

⁹ The site provides access to SoJ primary and secondary legislation:
<<https://www.jerseylaw.je/Pages/default.aspx>> accessed 11th August 2020.

is not a problem unique to SoJ and is possibly inevitable given the range of services provided by government, as well as the complexity of public governance. However, we are concerned that children or their families may find it difficult and/or confusing to establish their rights and entitlements, something which may itself act as a bar to accessing rights for children.

By way of an exception to our stated approach on recommendations (which we leave to the Commissioner and the AAP to determine), we recommend GoJ give consideration to developing a resource aimed at children to improve accessibility to SoJ legislation, or to supporting such a resource provided by an external organisation.¹⁰

HOW THE REPORT IS SET OUT

The remainder of this report sets out the Methodology for the LGA, and our findings. Our analysis and findings are set out in chapters dealing with SoJ legislation in the following thematic areas: Disability, Basic health and Welfare; Education, Leisure and Cultural Activities; Family Environment and Alternative Care; and, Special Protection Measures.

Each thematic chapter adopts the same layout, beginning with a brief summary of the areas covered in the chapter, focusing on the Convention articles and General Comments identified by the Committee in the Reporting Guidelines as most relevant to the thematic area under discussion. We provide a short summary of matters that governments are required to address when reporting periodically to the Committee on progress to implement the UNCRC in relation to each thematic area.

¹⁰ Examples of resources include children's law centres, see for example:

- In Scotland: <<https://www.clanchildlaw.org/>>
- In Wales: <<https://childrenslegalcentre.wales/>>
- In England: <<https://www.childrenslegalcentre.com/>>
- In Northern Ireland: <<https://www.childrenslawcentre.org.uk/>>

Accessed 11th August 2020.

Our analysis of SoJ legislation is sub-divided within each thematic chapter as follows:

- Main Headings, i.e. bold text/ underlined (and listed in the Content page above). These reference the specific Convention right (or rights) identified by the Committee as the most significant right engaged in relation to each thematic area.
- Sub-headings, i.e. bold text/italics (not shown in the Content page). These reference particular issues identified by the Committee as relevant to the implementation of a specific right.

Following analysis and discussion of a specific Convention right and any particular issues identified by the Committee as relevant under each thematic area, we set out our findings in relation to that right. In our findings we focus on areas where, in our view, SoJ falls short of meeting the expectation for legislative implementation of the UNCRC as determined through application of the compliance framework (findings appear under Main Headings.) We also comment, as relevant, on SoJ policy where this fails to meet with compliance expectations in areas that might be expected to be addressed by legislation.

Paragraph numbering begins at the start of the chapter on Disability, Basic Health and Welfare. We use continuous sequential paragraph numbering throughout the thematic chapters.

A collated summary of all findings under each thematic cluster is provided at the end of each thematic chapter (under Main Heading). The collated findings are separately numbered for ease of reference.

Finally, we have drawn together all our findings in one place and set these out as Appendix 2. For ease of reference these retain the numbering used in thematic chapters.

DISABILITY, BASIC HEALTH AND WELFARE

Areas Covered

1. This chapter covers topics dealt with under section 7 of the Reporting Guidelines,¹¹ i.e. Disability, Basic Health and Welfare, and under chapter 6, i.e. Basic Health and Welfare, in the Preliminary Report (Appendix 1).
2. The Reporting Guidelines list the most relevant Convention articles and General Comments¹² on Disability, Basic Health and Welfare as:
 - UNCRC Article 6, 18(3), 23, 24, 26, 27(1)-(3) and 33.¹³
 - General Comment No.3 (2003), on HIV/AIDS and the rights of the child.
 - General Comment No.4 (2003), on adolescent health and development in the context of the Convention on the Rights of the Child.
 - General Comment No.9 (2009), on the rights of children with disabilities.
 - General Comment No.15 (2013), on the right of the child to the enjoyment of the highest attainable standard of health.
3. The Reporting Guidelines list areas that governments should address when reporting to the Committee in relation to Disability, Basic Health and Welfare as:
 - Children's survival and development.
 - Disabled children, specifically measures taken to ensure their dignity, self-reliance active participation in the community, and access to services, transportation and institutions, in particular to education and cultural activities.
 - Health and health services, in particular primary health care.¹⁴

¹¹ Note 3.

¹² Note 7.

¹³ Note 1.

¹⁴ General Comment 15 (note 7) references the 'Declaration of Alma-Ata, International Conference on Primary Health Care' which states that primary health care should address *'the main health problems in the community, providing promotive, preventive, curative and rehabilitative services'* and lists primary health care to include *'at least: education concerning prevailing health problems and the methods of preventing and controlling them; promotion of food supply and proper nutrition; an adequate supply of safe water and basic sanitation; maternal and child health care, including family planning; immunization against the major infectious diseases; prevention and control of*

- Efforts to address health challenges, to promote the physical and mental health and well-being of children and to prevent and deal with communicable and non-communicable diseases.
- Reproductive health rights of adolescents and measures to promote a healthy lifestyle.
- Measures to protect children from substance abuse.
- Social security and childcare services and facilities.
- An adequate standard of living and measures taken to ensure children's physical, mental, spiritual, moral and social development, and to reduce poverty, including material assistance and support programmes with regard to nutrition, clothing and housing.

4. While not all the areas covered in the Reporting Guidelines require States to introduce legislative measures of implementation, it is anticipated that legislative measures, including framework legislation, will be amongst the measures introduced.

Right to Life, Survival and Development (Article 6)

5. The right to life, survival and development is a general principle of the UNCRC set out in Article 6.¹⁵ A basic obligation of Article 6 is a requirement to recognise the right to life (Article 6(1)). Based on our review of the Committee's General Comments listed above we have identified other issues of particular concern to the Committee as:

- How children are protected from violence and injury which could imperil their survival.
- How children are protected from other harms, such as environmental harm, or harmful products which may similarly put their lives at risk, cause injury, or impede their development.
- The protection given in law against traditional practices that harm children, for example female circumcision.
- How children are protected from exploitation, in particular from work which might impact on their development.

locally endemic diseases; appropriate treatment of common diseases and injuries; and provision of essential drugs.' Available here:

< https://www.who.int/publications/almaata_declaration_en.pdf?ua=1 > accessed 5th August 2020, para VII, 3.

¹⁵ General Principles are those rights set out in UNCRC: Article 2 (non-discrimination), Article 3 (best interests), Article 6 (life, survival and development), and Article 12 (to be heard and listened to). See in particular: General Comment No.5, note 6.

- Road safety and prevention of traffic accidents, including the regulation of seatbelt use, and seatbelt safety for disabled children.

Protection

6. The Human Rights (Jersey) Law 2000 (Human Rights Law) gives effect in SoJ law to the rights and freedoms guaranteed under the European Convention on Human Rights (ECHR). The Human Rights Law provides recognition of the right to protection of life (ECHR, Article 2).
7. Incorporation of ECHR Article 2 into SoJ law by the Human Rights Law is consistent with the requirement to recognise the right to life and survival guaranteed by the UNCRC, as it implies an obligation on the SoJ to put in place measures to protect life.¹⁶
8. The ECHR does not expressly provide a right to development for children (or adults). However, certain ECHR articles may be seen as supportive of human personal development, including children's development. Examples include: Article 4, prohibition of slavery and forced labour; Article 9, freedom of thought, conscience and religion, and First Protocol Article 2, on education. Incorporation of the ECHR by the Human Rights Law is consistent with the right to development set out in the UNCRC, but it is not express recognition of the Convention right.
9. SoJ sectoral legislation protects children from injury and harm. This includes codified criminal law which establishes a number of offences against the person, including the person of a child, e.g. parts 3-6 of the Sexual Offences (Jersey) Law 2018 (Sexual Offences Law).
10. The Children (Jersey) Law 2002 (Children Law) gives children specific protection against harm caused by caregivers by making it an offence for any person with responsibility for a child under 16 to intentionally or recklessly harm or neglect a child.¹⁷ This protection does not apply to children aged 16/17 years.

¹⁶ See for example, *Osman v UK*, [1999] 1 FLR 193.

¹⁷ Article 35

11. The Children Law provides for the police or the Minister to take action if they have reasonable cause to suspect that a child (aged 17 years or younger) is suffering, or is likely to suffer significant harm¹⁸ (including, in the case of the Minister, child assessment orders and emergency protection orders¹⁹).
12. It is not apparent from the Children Law (or any other legislation) the extent to which relevant authorities other than the police or the Ministers are empowered, or have responsibility, to take action to protect children.²⁰
13. The Children Law places a duty on the Minister to provide accommodation for children in need where (in summary) this is not available from the child's caregiver.²¹ The Children Law also places obligations on the Minister to promote the welfare of any child accommodated, as well as children 'looked after' by the Minister or children in private foster care.²²

¹⁸ Article 36.

¹⁹ Articles 36 and 37.

²⁰ During a meeting with representatives of the GoJ (11th December 2019), reference was made to a 'delegation schedule'. On examination this appears limited to delegation of political oversight. The Minister for Health and Social Services has delegated political oversight responsibilities for children's services to the Assistant Minister for Health and Social Services: <https://statesassembly.gov.je/assemblyreports/2018/r.124-2018.pdf?_ga=2.84671067.331558717.1576158160-2076500371.1571056606> accessed 24th July 2020.

The Minister for Education has delegated political oversight responsibilities for Skills Jersey and Higher Education to a States Deputy:

<https://statesassembly.gov.je/assemblyreports/2018/r.125-2018.pdf?_ga=2.142668535.331558717.1576158160-2076500371.1571056606> accessed 24th July 2020.

We also found an example of delegation to officers external to the SoJ Government or States Deputies. The Minister for Children and Housing has delegated some functions under Lodging Houses legislation to the Housing Control Manager (and other officers instructed by that person) and the Head of Environmental Health (and other officers instructed by that person): <https://statesassembly.gov.je/assemblyreports/2018/r.129-2018.pdf?_ga=2.78838742.331558717.1576158160-2076500371.1571056606> accessed 24th July 2020.

Responsibility for Children's Services has been transferred to the Minister for Children and Housing: <<https://statesassembly.gov.je/assemblyreports/2020/r.10-2020.pdf>> accessed 15th September 2020.

All Ministerial delegations are listed online:

<<https://www.gov.je/Government/HowGovernmentWorks/Pages/DelegatedFunctions.aspx>> accessed 15th September 2020.

²¹ Article 17.

²² Articles 17, 19 and 61.

14. The Children Law does not include any general requirement on the Minister (or any authority) to identify and take action to promote the welfare, or the best interests, of all children in Jersey.²³

15. The Children Law was recently amended to substitute Article 79 to abolish the defence of reasonable chastisement against charge of assault where a parent or other caregiver inflicts physical punishment on a child as a form of punishment. This is consistent with long-standing view of the Committee that physical punishment of the child is unlawful in all circumstances.²⁴ The amendments also delete an exception to the general law on assault which exempted the actions of a parent, teacher or anyone having lawful control or charge of a child from the offence of causing harm to or neglecting a child under the age of 16.²⁵

16. The Education (Jersey) Law 1999 (Education Law) authorises the use of reasonable physical restraint in education settings, for the protection of the child, other children and to prevent damage to property.²⁶

Consumer safety and environmental harms

17. The Consumer Safety (Jersey) Law 2006 protects all consumers in Jersey against unsafe consumer goods supplied in the course of commercial activity.²⁷ The legislation provides that in assessing the safety of consumer goods (products) account is to be taken of whether they are safe for children.²⁸ The Food Safety (Jersey) Law 1966 protects children against food contamination.

²³ We are informed by the GoJ (17th August 2020), of its intention to embed the four guiding principles of the UNCRC into the Children's Law through the Omnibus amendment which is due to be enacted during 2021. See: <<https://www.gov.je/Government/Consultations/Pages/ChildrensLawReform.aspx>> and <<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/C%20Children%27s%20Law%20reform%20consultation%20summary.pdf>> both accessed 17th August 2020.

²⁴ General Comment No. 8, 2006, note 7.

²⁵ Deleting Article 35(5).

²⁶ Article 36A.

²⁷ Article 2.

²⁸ Article 3.

18. In its Concluding Observations in 2016 the Committee recommended the UK set out a legal commitment to reduce air pollution, especially near schools and residential areas.²⁹ In Jersey a number of orders have been made under the UK Food and Environment Protection Act 1985 concerning e.g. waste discharges into the sea. The majority of Jersey's environmental legislation is based on the requirements of multi-lateral environmental agreements with the UK extended to Jersey, and include monitoring, reporting and awareness raising provisions as well as legislation. We have been informed that some provisions of the UK's environmental protection regime have been embedded into SoJ legislation piecemeal, including on waste management, water pollution and noise nuisance, but there is no overarching framework of environmental protection legislation.³⁰

19. The SoJ does not have domestic framework legislation to protect the environment, or to ensure that SoJ regulations or policy addresses issues such as localised air pollution or environmental contamination affecting children.³¹

20. Sectoral SoJ legislation provides protection for children against harms which they may experience in the environments in which they live, e.g. the Public Health and Safety (Rented Dwellings)(Jersey) Law 2018 which places a duty on the Minister to promote health and safety in rented dwellings. The Health and Safety (Work

²⁹ Note 4, para 69(a).

³⁰ Based on information provided to us by GoJ officials (11th December 2019). The Waste Management (Jersey) Law 2005 governs waste management within Jersey and the transboundary movement of waste to and from Jersey. The 2005 Law, among other things, implements requirements under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The Water Pollution (Jersey) Law 2000 governs water quality, discharges and pollution offences. The Statutory Nuisances (Jersey) Law 1999 provides, in general terms, that noise emitted from premises which is prejudicial to health or a nuisance is a statutory nuisance, and provides, among other things, for abatement proceedings against such a nuisance.

³¹ The Committee's Concluding Observations in 2016 (note 4) recommended the UK should:

- Set out a clear legal commitment, with appropriate technical, human and financial resources, to scale up and expedite the implementation of plans to reduce air pollution levels, especially in areas near schools and residential areas;
- Place children's rights at the centre of national and international climate change adaptation and mitigation strategies, including through its new domestic climate strategy, and in the framework of its international climate change programmes and financial support.

Experience) (Jersey) Regulations 2006 extends the protections given to employees in the working environment to persons who may be undertaking work experience (who might include children). The Children Law provides that a child will be treated as an employee if they assist in a trade or occupation carried on for profit.³² Therefore, while a child is not expressly protected, they will benefit from duties placed on employers by health and safety regulations.

Protection against traditional practices

21. The Sexual Offences Law makes it a criminal offence to carry out female genital mutilation (FGM), or to assist someone to do so, and creates an offence for people responsible for a child aged 15 or younger to fail to protect that child from FGM.³³ Older children are not protected by this requirement.

22. Under the Sexual Offences Law regulated professionals have a duty to inform the police if a child (aged 17 or younger) tells them that they have been subject to FGM, or if they see something physical on the child which leads them to believe FGM has been carried out.³⁴ There is the possibility to apply to the Royal Court for an FGM protection order to protect someone from FGM, or to protect someone who has undergone FGM.³⁵

Protection against exploitation, employment

23. The Children Law empowers the Minister to take action to restrict the employment of children, and to intervene where children are employed in a manner which is prejudicial to their health or prevents them from receiving the full benefit of education.³⁶

24. The Children Law and associated subordinate legislation establish a statutory SoJ minimum age for employment as 13 years.³⁷ This is below the internationally recommended minimum working age.³⁸

³² Article 48(5).

³³ Article 30.

³⁴ Article 31.

³⁵ Article 32.

³⁶ Article 48.

³⁷ Article 48. See also: Children (Regulation of Employment) (Jersey) Order 2011.

³⁸ The ILO Minimum Age Convention 1973 (No 138):

25. The Children Law provides that children younger than 13 years can work in a performance if a licence is granted by the Minister in relation to the performance, and in some cases employment of a child under 13 years in a performance is permitted without a licence.³⁹

26. The Children (Regulation of Employment) (Jersey) Order 2011 sets limits on when, and how long children under the age of 16 can work, setting graduated limits for the amount of time a child can work, and placing restrictions on harmful work, and work that would prejudice attendance at school. The regulation also places restrictions on particular types of work and requires breaks to be provided.⁴⁰

27. There is no legal minimum wage for children under compulsory school age who work.⁴¹ An employer paying less than the minimum wage to a child aged under compulsory school age does not contravene the SoJ Discrimination (Jersey) Law 2013 (Discrimination Law) in relation to the protected characteristic of age.⁴²

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138> accessed 20th July 2020.

This sets a minimum age for employment as not less than ‘...*than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years...*’, although ‘*light work*’ is permissible for 13-15 yr olds providing this not harmful and does not prejudice school attendance. There was some debate about whether the Committee should adopt the minimum age standards set out in the ILO convention, in the run up to the preparation of General Comment No.4 (note 7). General Comment No.4 para 18 says ‘...*The Committee urges States parties to take all necessary measures to abolish all forms of child labour, starting with the worst forms, to continuously review national regulations on minimum ages for employment with a view to making them compatible with international standards, and to regulate the working environment and conditions for adolescents who are working (in accordance with article 32 of the Convention, as well as ILO Conventions Nos. 138 and 182), so as to ensure that they are fully protected and have access to legal redress mechanisms*’. The Committee does not go as far as adopting the ILO’s position, but offers it as a point of reference.

³⁹ Article 50.

⁴⁰ Regs. 4 and 7.

⁴¹ Employment (Jersey) Law 2003, Article 16.(2)(c) confirms that an employee qualifies for the minimum wage once he/she ‘...*has ceased to be of compulsory school age.*’

⁴² Schedule 2 Part 4 para.29.

Road safety

28. The Road Traffic (Jersey) Law 1956 establishes a scheme of road safety, including licensing of drivers, registration of driving instructors, physical fitness to drive, speed limits, minimum driving ages etc.

29. SoJ has subordinate legislation in place in relation to the wearing of seatbelts and other measures related to road safety and children. For children under the age of 14, on pain of a fine an adult is made liable for ensuring that the child is wearing a seatbelt when travelling.⁴³ Disabled children do not have to travel wearing a seatbelt if there is a medical exemption certificate or they are wearing a disabled person's belt.⁴⁴

30. By virtue of regulations, wearing a cycle helmet is compulsory for those aged 13 and under (subject to certain exceptions), but this does not extend to older children.⁴⁵

Findings: Article 6

31. SoJ legislation provides significant protections for children against harm. However, we have identified gaps in the current legislative framework:

- The right to development is not recognised in SoJ legislation.
- SoJ does not have framework legislation to protect the environment, or to address issues such as localised air pollution or environmental contamination.
- The Children Law does not specify which relevant authorities (other than police or Ministers) are empowered, or have responsibility, to take action to protect children.
- The Children Law does not include a general requirement on the Minister (or any authority) to take action to promote the welfare of all children in Jersey.
- The Children Law does not impose a duty on the Minister to take action to promote the best interests of all children in Jersey.
- Statutory protection against harm or neglect inflicted by care-givers does not extend to children aged 16/17 years.
- The statutory requirement to protect a child from FGM does not extend to children aged 16/17 years.

⁴³ Motor Vehicles (Wearing of Seat Belts by Children)(Jersey) Order 1998. From 17th August 2020: Motor Vehicles (Wearing of Seat Belts by Children)(Jersey) Order 2020.

⁴⁴ Ibid.

⁴⁵ Pedal Cycles (Jersey) Order 1998, Article 6A.

- The statutory minimum age for employment is below the recommended minimum working age.
- There is no legal minimum wage for children under compulsory school age.
- Legislation requiring adults to ensure that children use seatbelts does not extend to children aged 15 years or older.
- The statutory requirement to use of cycle helmets does not extend to children aged 14 years or older.

Childcare Services and Facilities (Article 18.3)

32. Article 18(3) requires States to ensure that children of working parents benefit from childcare services. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- Services to which children, pregnant women and mothers are entitled.
- The availability of childcare and other facilities to parents and other care-givers.
- Financial support for parents and other care-givers to take advantage of childcare opportunities.
- The right of working parents to benefit from social security and childcare services and facilities.

33. The Education Law gives the Minister a power to establish and maintain pre-school nursery care and services.⁴⁶ Under regulations the Minister has established a policy which provides for free nursery care (20 hours a week, for 38 weeks) for all children in the year before they reach compulsory school age.⁴⁷

34. The Employment (Jersey) Law 2003 (Employment Law) sets out the entitlements of working parent(s) including paid time off for ante-natal care, paid and unpaid parental leave, and the right to return to work, and to request flexible working.⁴⁸

35. The right to parental leave is introduced by the Employment (Amendment No 11) (Jersey) Law 2020 which amends the Employment Law on maternity, adoption and

⁴⁶ Article 8.

⁴⁷ Education (Nursery Fees)(Jersey) Regulations 2011.

⁴⁸ Article 15A.

parental leave, to provide parental leave of up to 52 weeks in total, 6 weeks of which is paid. Parental leave is available to the mother and to a person with a qualifying relationship with the mother or adopter, who expects to be involved in the child's upbringing.⁴⁹

36. Under the Employment Law an employee is entitled to the benefit of all terms and conditions of employment (except those relating to remuneration) during the parental leave period, and has the right to return to work at the end of a period of parental leave. Anyone seeking to enforce or secure a benefit is not to suffer detriment for requesting or enforcing their entitlement.⁵⁰

37. The Social Security (Jersey) Law 1974 (Social Security Law) provides for contribution dependent maternity allowance payable for 18 weeks, and a one-off maternity grant, and an adoptive parent grant (payable for multiple births).⁵¹ Maternity allowance may be taken before or after the birth of a child.⁵²

38. There is currently no equivalent of SoJ maternity allowance available for an adoptive parent. We are informed that policy provides for payment of an adoption grant, subject to contributions.⁵³

Findings: Article 18(3)

39. SoJ legislation provides a comprehensive scheme of benefits for working parents (NB the adequacy of allowances is a matter beyond the scope of this research). However:

- Legislation (rather than policy) should underpin support for adoptive parents on an equivalent basis as maternity allowance.

⁴⁹ Including someone married to the mother, a civil partner or partner. The 52 week period can begin no earlier than the 11th week before the week in which childbirth or placement for adoption is expected to occur, and can be taken any time up to 2 years from the date of birth or placement for adoption, unless the employment has ended earlier. Employment (Jersey) Law 2003, Part 5A.

⁵⁰ Part 5A and Article 31.

⁵¹ Articles 21-23A.

⁵² Article 22.

⁵³ Social Security (Jersey) Law 1974, Article 23A. We understand that legislation will equalise benefits within the year.

Disabled Children (Article 23)

40. Article 23 requires that disabled children should enjoy a life of dignity, self-reliance and active participation in the community, in education and cultural activities, and that their needs should be met to the full extent that resources permit. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- There should be clear and explicit provisions for the protection and exercise of the specific rights of disabled children.
- Laws should prohibit discrimination against children on grounds of disability.
- Laws and regulations should apply to disabled children as they do to non-disabled children.

41. The Discrimination Law prohibits discrimination based on protected characteristics, including age and disability. This applies to the provision of goods and services, access to public premises, and education.⁵⁴

42. The Children Law does not expressly recognise a disabled child as a 'child in need' who may need additional resources to be able to exercise or benefit from their rights.

43. The Education Law places a duty on the Minister to make available appropriate, free provision for all children with special educational needs.⁵⁵ The Committee, in its Concluding Observations on the UK State Party in 2016 recommended that the UK introduce comprehensive measures to further develop inclusive education and to ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them in relation to education.⁵⁶ As a general principle this is what is required by UNCRC Article 12.⁵⁷

44. The Education Law provides that children who have special educational needs will be educated in a school which is not a special school unless this is incompatible with the wishes of the child's parents, or the child themselves provided that they are

⁵⁴ Articles 21-23.

⁵⁵ Articles 4 and 28.

⁵⁶ Note 4, para. 57.

⁵⁷ Note 15.

aged 16 or older.⁵⁸ The SoJ Special Educational Needs Code of Practice 2017 includes a statement that the views, wishes and feelings of a child/young person and their parents/carers should be 'had regard to', but this is not mandated by SoJ legislation.⁵⁹

Findings: Article 23

45. We have identified the following gaps in current SoJ legislation:

- The Children Law does not expressly recognise a disabled child as a 'child in need' to help ensure access to additional resources.
- The Education Law does not guarantee the right of a child aged under 16 with special educational needs to have their views taken into account when a decision is made about their education.

Health and Health Services (Article 24)

46. Article 24 guarantees the right to the highest attainable standard of health, and to access healthcare services, including primary healthcare.⁶⁰ No child shall be denied this right. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- The recognition, including through legislation, of children as rights-holders in respect of the right to health.
- There should be an underpinning of fully accessible health services for all children, in particular primary health care, and a framework for early childhood development services.
- Legislation should specify the amount allocated to health spending.
- The availability of pre-natal and postnatal care.
- Prevention of discrimination against children with HIV/AIDS in the provision of health services.
- Recognition of the child's right to consent, or deny consent, to treatment.
- How children are protected from harmful substances.

⁵⁸ Article 29.

⁵⁹ SOJ, Special Educational Needs Code of Practice 0 – 19 years October 2017: <<https://www.gov.je/sitecollectiondocuments/education/p%20sen%20code%20of%20practice%2020180212%20jp.pdf>> accessed 20th July 2020.

⁶⁰ Note 14, on primary care.

Health services

47. The GoJ Preliminary Report (Appendix 1) states that all children have access to healthcare in Jersey through subsidised primary and secondary healthcare, and that families on income support receive a contribution towards the costs of accessing primary healthcare.⁶¹ The report focuses on the range of services, but says very little about how these are accessible to children, in particular how the costs of services are met at the point of delivery. We have been unable to find legislation which specifies the amount spent on health.

48. Information on health care services, access, eligibility and charging is complex. Understanding what is available would be difficult for even the most intelligent child and may operate as a bar on access.

49. Healthcare services including doctors (GPs) and dentists are not free of charge in Jersey. Access to healthcare is underpinned by a contributory health insurance scheme established under the Health Insurance (Jersey) Law 1967 (Health Insurance Law), but children cannot access health insurance in their own name until they are no longer of compulsory school age of (where a child attains the age of 16 years before the 30th June in a school year).⁶²

50. Under the Health Insurance Law children of compulsory school age and younger have access to insurance backed healthcare if they belong to the household of an insured person, who is themselves required to be ordinarily resident in Jersey.⁶³ In order to be eligible for insurance benefits, including for children, the Health Insurance Law requires that the insured person must have been entered into an insurance scheme for 6 months, and to have paid all social security contributions that are due.⁶⁴

⁶¹ Chapter 6, section D, para 1.

⁶² Article 3. See also: Education(Jersey) Law 1999, Article 2.

⁶³ See also: Health Insurance (Residence and Persons Abroad) (Jersey) Order 1967. We have been informed (GoJ comments, 15th and 16th September 2020) that approved prescription drugs are dispensed free of charge if they are included on a 'white list' (otherwise prescriptions charges are included in the cost of a GP visit), and that a free dental clinic is available for children, but that the waiting list on average is 12 months.

⁶⁴ Articles 3 and 6.

The Social Security Law makes provision to supplement the contributions payable by insured persons not in employment.⁶⁵

51. Where the insured person responsible for a child fails to meet health insurance eligibility requirements, whether through circumstance or choice, a child of compulsory school age will not be able to access insurance backed health care.

52. GP consultation services are available to those who do not meet the criteria to benefit from insurance backed healthcare through an Urgent Treatment Centre (this was a Covid-19 measure and has now closed). The current charge for a child aged 5 or older (whether or not registered with a GP) is £10: the service is free for children aged 4 or under.⁶⁶ On 16th June 2020 a proposition was lodged with the SoJ Assembly to extend the free service to children aged 5-17 years: but was defeated.⁶⁷

53. A Residents and Non-Residents Charging Policy (Charging Policy) covers services other than GPs and dentists, provided by the SoJ Health and Social Services Department in hospitals and as long-term care.⁶⁸ This states that emergency treatment in a hospital emergency department is free for anyone who needs it.⁶⁹ Under the Charging Policy the provision of free non-emergency hospital care and treatment for anyone who needs it is dependent on meeting a number of conditions, which include length of residence and employment status.⁷⁰ Some people in need of non-emergency hospital treatment, including an independent child, may find these conditions difficult to meet. For dependent children in full time education eligibility for free non-emergency

⁶⁵ Article 9, Schedule 1B, para.5.

⁶⁶ We are unable to locate the relevant policy, but see for example: <<https://www.gov.je/Health/DoctorDentist/Doctors/Pages/HealthCard.aspx>> and <<https://www.channel103.com/news/jersey-news/utc-charge-change-scrapped/>> both accessed 5th August 2020.

⁶⁷ Available here: <<https://statesassembly.gov.je/assemblypropositions/2020/p.80-2020.pdf>> accessed 10th August 2020.

And <<https://statesassembly.gov.je/Pages/Votes.aspx?VotingId=5893>> accessed 15th September 2020.

⁶⁸ Residents and Non-residents Charging Policy, 2014:: <<https://www.gov.je/SiteCollectionDocuments/Health%20and%20wellbeing/P%20Resident%20and%20Non%20resident%20Charging%20Policy%2020140829%20MM.pdf>> accessed 24th July 2020.

⁶⁹ Ibid, Part 1.

⁷⁰ Ibid, Part 2.

hospital treatment is contingent on their parents being entitled to free treatment.⁷¹ This may exclude some children from free treatment.

54. The Charging Policy provides that a child assessed as in need of long-term care, as defined in the Long Term Care (Jersey) Law 2012, will be eligible for free care provided that they, or their parent(s) meet residence and employment conditions.⁷² Once again some children may be unable to meet these conditions, either in their own right or vicariously through their parents.

55. The Charging Policy states that pregnant women are only eligible for free maternity, birth and postnatal care and treatment if they are eligible for free non-emergency hospital treatment.⁷³ Once their child is born it will be eligible for free care if born in Jersey irrespective of the entitlement of the child's mother, providing that the mother can provide evidence to demonstrate that neither she, nor her unborn baby, had any previously-diagnosed condition that may result in the baby requiring specialist care; and, the baby and its parent(s) are to remain living and working in Jersey.⁷⁴ This discriminates against unborn children with underlying health conditions, and may prejudice a child right to life and development once born (UNCRC Article 6).

56. The Discrimination Law does not specify HIV status as a protected characteristic.⁷⁵ According to the Charging Policy HIV treatment is not included as a treatment for a sexually transmitted disease which is exempt from charges.⁷⁶ Testing and counselling for HIV is provided free, but clinical treatment including the provision of drugs, depends on the individual being 'continuously ordinarily resident in Jersey for six consecutive months immediately prior to requiring treatment and/or medication.'⁷⁷

57. The Charging Policy is expressly and directly discriminatory (in breach of UNCRC Article 2, as a general principle of the Convention⁷⁸) as it allocates health

⁷¹ Ibid, Part 2.

⁷² Ibid, Part 5.

⁷³ Ibid, Part 6.

⁷⁴ Ibid, Part 6.

⁷⁵ Cf. UK Equality Act 2010, Schedule 1 Part 1, HIV is recognised as a disability.

⁷⁶ Note 68, Appendix 6.

⁷⁷ Ibid.

⁷⁸ Note 15.

resources by reference to status, based on residence and/or employment. The Charging Policy sets a number of criteria which need to be met before a child can access free non-emergency hospital treatment, long-term care or HIV treatment. Children may find it impossible to meet eligibility criteria in their own right. Dependent children may be denied treatment because their parents or carers fail to meet the requisite residence or employment criteria.

Consent and best interests

58. The Consent to Medical Treatment (Jersey) Law 1973 provides that those aged 16 and older can give consent to treatment without further reference to a parents or guardian.⁷⁹ The ‘Gillick’ test⁸⁰ is applied to determine the competency of children aged under 16 years to consent to treatment.⁸¹

59. The Committee, in its Concluding Observations on the UK in 2016, recommended a review of legislation on mental health to ensure that the best interests and the views of the child are taken into account in cases of mental health treatment of children below the age of 16 years.⁸²

60. The Mental Health (Jersey) Law 2016 (Mental Health Law) provides that regulations may specify when treatment may be given without the consent of a child,⁸³ but so far no regulations have been made to address this matter.

61. The Mental Health Law requires authorised officers to act in the best interests of the patient, who might be a child, when exercising functions under the legislation, including in relation to treatment.⁸⁴

⁷⁹ A 16 yr old is treated as if they had attained majority (18) in respect giving consent at which point the Capacity and Self Determination (Jersey) Law 2016 applies to determine capacity: this is assumed unless shown otherwise.

⁸⁰ For information on the Gillick test: <<https://learning.nspcc.org.uk/child-protection-system/gillick-competence-fraser-guidelines>> accessed 11th August 2020.

⁸¹ E.g. Mental Health (Jersey) Law 2016 Code of Practice: <<https://www.gov.je/SiteCollectionDocuments/Crime%20and%20justice/ID%20COP%20Mental%20Health%2020180928%20SDF.pdf>> and the Minister’s Duty to Investigate, Multi-Agency Capacity Policy and Procedures [Jersey] February 2018: <<https://safeguarding.je/wp-content/uploads/2018/05/Capacity-Policy-FINAL-Document-SAPB-2018-04-05-v5.pdf>> both accessed 24th July 2020.

⁸² Note 4, Para.61.

⁸³ Article 46.

⁸⁴ Article 6.

Findings: Article 24

62. SoJ legislation fails to ensure that children are guaranteed the right to the highest attainable standard of health. This is also a failure to ensure the child's right to development under Article 6. We have identified gaps in SoJ legislation:

- SoJ legislation establishes a scheme under which a dependent child's access to GP and other primary healthcare services will be denied if parents or carer(s) is not eligible for health insurance, or is unable to meet the criteria to receive the benefit of health insurance.
- Independent children may be denied access to healthcare based on their residence or employment status, and due to their inability to meet status-based eligibility criteria.
- There is no SoJ legislation which specifies the amount spent on health.
- The Charging Policy deals with issues which are anticipated as matters for legislation and is expressly and directly discriminatory as it allocates health resources by reference to status, based on residence and/or employment, contrary to UNCRC Article 2.
- The Charging Policy may lead to children being denied the right to life and development.

63. We also note the need for regulations to specify when mental health treatment may be administered without the consent of a child.

Social Security and Standard of Living (Articles 26 and 27)

64. By virtue of Articles 26 and 27 all children should have access to material assistance and support programmes to support their development, including the right to benefit from social security (social insurance), taking account of the resources and the circumstances of the child and persons having responsibility for their maintenance. The child should be ensured a standard of living adequate for their development. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- Access to social security.
- Adequacy of social security.
- Access to decent housing.

Social security

65. The Income Support (Jersey) Law 2007 (Income Support Law) introduces social protection through a system of income support. The Income Support Law defines an ‘adult’ as someone over compulsory school age, and a child as someone below the upper limit of compulsory school age.⁸⁵ Compulsory school age is defined in the Education Law, and ends on 30th June in the school year in which the child attains the age of 16 years.⁸⁶

66. To qualify for income support, and by virtue of the Income Support Law, an adult (as defined) in an income support household must satisfy a residence test (5 years) and must be working, actively looking for work, or exempt from work.⁸⁷ If the income support claimant is a member of a larger household, all adult members of that household must be working full time (35 hrs/week) or actively seeking work, or exempted from this requirement, and the household income must be below income support payment rates.⁸⁸ The work requirement can be overridden by additional caring responsibilities, e.g. someone caring for a disabled child.⁸⁹ Separate allowances are paid in respect of fostered children,⁹⁰ which are not included in the calculations for income support.⁹¹ Adults are expected to look for work year round and not term time only, but further assistance may be available to cover costs of childcare during term time.⁹²

67. Where an adult claimant leaves work without ‘good cause’ regulations provide for a sanction period of 91 days during which income support will be paid at a reduced rate.⁹³ This applies equally where the claimant is a member of a household which includes a child.

⁸⁵ Article 1(1).

⁸⁶ Article 2(1).

⁸⁷ Article 2. See also: Income Support (General Provisions) Jersey) Order 2008, Article 2.

⁸⁸ Articles 2 and 6.

⁸⁹ Article 3.

⁹⁰ Foster Carer Handbook:

<<https://www.gov.je/SiteCollectionDocuments/Health%20and%20wellbeing/Foster%20Carer%20Handbook.pdf>> accessed 24th July 2020.

⁹¹ Income Support (General Provisions) (Jersey) Order 2008, Schedule 2 6(b).

⁹² Income Support (Jersey) Law 2007, Article 8.

⁹³ Income Support (Jersey) Regulations 2007, Article 5.

68. The Income Support Law provides that support rates are increased to account for dependent children,⁹⁴ and that single parents will receive a higher rate of support if they have a dependent child (under the age of 19) in full time education or training.⁹⁵ Policy guidelines confirm that a child who is in full time employment is not included in the income support household of the adult responsible for them, even if they are living with that adult.⁹⁶ The Income Support Law provides that only one claim may be made at any one time on behalf of an income support household.⁹⁷

69. A child who is over the compulsory school leaving age (and so an ‘adult’ for the purposes of the Income Support Law, see above), will be eligible for income support if they live independently.

70. The Committee requires States to ensure that support provided by way of benefits is adequate. This research is limited to determining whether support is available, the issue of adequacy taking account of economic factors in Jersey is beyond the scope of this LGA.

Housing

71. Access to housing in Jersey is governed by the Control of Housing and Work (Jersey) Law 2012 (Housing and Work Law).⁹⁸ This places restrictions on the occupation of ‘qualified’ housing, limiting its availability to persons with a defined (by the Housing and Work Law) status in order to reserve some housing to meet the needs of long-established ‘entitled’ residents (10 years occupation), or residents whose employment entitles them to ‘licensed’ status (licensed employment).⁹⁹

⁹⁴ Article 5.

⁹⁵ Ibid.

⁹⁶ Income Support Policy Guidelines, 2019:

<<https://www.gov.je/SiteCollectionDocuments/Benefits%20and%20financial%20support/ID%20Income%20Support%20Policy%20Guidelines.pdf>> accessed 24th

July 2020, para 1.8.

⁹⁷ Article 4(2).

⁹⁸ During a meeting with representatives of the GoJ (11th December 2019), reference was made to a Homelessness Strategy. This appears to be in preparation rather than ‘live’. Available here: <<https://www.itv.com/news/channel/2019-08-13/homelessness-strategy-to-be-created-in-jersey/>> accessed 24th July 2020.

⁹⁹ Article 17. See also: Control of Housing and Work (Residential and Employment Status)(Jersey) Law 2013.

72. The reservation of qualified housing to Jersey residents with a particular status has the effect of limiting available housing that is accessible to Jersey residents who do not have Entitled or Licensed status, such as those who have been working in Jersey for more than 5 but less than 10 years or children who have reached the age of 16 years who were previously employed, and continue to be employed in Jersey (Entitled for Work status), and short term residents in Jersey (Registered status).¹⁰⁰

73. The GoJ Preliminary Report (Appendix 1) refers to social rented housing provided by the housing department and local housing trusts for those unable to afford to rent or buy on the open housing market; access to affordable housing is via an Affordable Housing Gateway (AHG), which is only available to adults with Entitled or Licensed status (see caveat in footnote).¹⁰¹ The AHG provides for access to accommodation based on categories of need. An independent report prepared in 2019 highlights the lack of affordable housing in Jersey, and therefore the lack of access for vulnerable groups. The report also highlights how ‘poor conditions in parts of the private rented stock that are experienced by households that are in housing need but are ineligible to join the AHG’.¹⁰²

74. The AHG is discriminatory (in breach of UNCRC Article 2¹⁰³) as it excludes some potential applicants from accessing affordable housing. SoJ legislation does not provide for housing, or access to housing to be determined by reference to need or vulnerability, including vulnerability by reason of age.

¹⁰⁰ Ibid.

¹⁰¹ Chapter 6, section E, para 2. The AHG is available here:

<<https://www.gov.je/Home/RentingBuying/ApplicationAllocation/Pages/HowToApply.aspx>> accessed 5th August 2020.

We have been informed (GoJ comments, 15th September 2020) that the AHG is not available to residents with Licensed status. This does not concur with our reading of the AHG on 5th August 2020, but we have since been unable to locate the full AHG and cannot confirm the position.

¹⁰² *Executive summary: allocations and lettings in Jersey*, Government of Jersey, 2019. Available here:

<<https://www.gov.je/SiteCollectionDocuments/Travel%20and%20transport/R%20Review%20Access%20Social%20Housing%20Executive%20Summary.pdf>> accessed 5th August 2019, p.6.

¹⁰³ Note 15.

75. The Income Support Law makes provision for eligible persons to be entitled to reasonable housing costs as part of their overall benefit.¹⁰⁴ Regulations provide that a person aged under 25 is not eligible for a housing component unless responsible for and living with a child, or they cannot be expected to remain in the family home.¹⁰⁵ Support for housing costs to enable children who do not meet these criteria will be subject to a discretionary payment (by the Minister exercising powers under the Children Law), and cannot be guaranteed.

76. Policy guidelines confirm that a child (16/17 years) who lives with a foster family which is not itself an income support household can claim income support in his own right including the accommodation component at hostel or rent charged level, whichever is the lower.¹⁰⁶

77. The Children Law places a duty on the Minister to provide accommodation for children in need whose welfare the Minister considers likely to be seriously prejudiced if housing is not provided.¹⁰⁷

78. Anecdotal evidence suggests that homelessness is an increasing problem among young people aged 16-25 in Jersey,¹⁰⁸ and is, in the main, tackled through third sector organisations.

Findings: Articles 26 and 27

79. SoJ legislation makes provision for the payment of social security to support living and housing costs for children, and households with dependent children. (NB the adequacy of any allowances payable is a matter beyond the scope of this research). We have found the following gaps in current SoJ legislation:

- The statutory tests applied to determine adult eligibility for income support may result in children being denied the right to benefit from social security.
- Statutory sanctions imposed on adults for leaving work without good cause will deny children the benefit of social security.

¹⁰⁴ Article 5.

¹⁰⁵ Income Support (Jersey) Regulations 2007, Schedule 1A(3).

¹⁰⁶ Note 96.

¹⁰⁷ Article 17.

¹⁰⁸ See, for example: <<https://jerseyeveningpost.com/news/2018/11/17/number-of-young-homeless-people-alarming-says-trust/>> accessed 11th August 2020.

- Restrictions on the availability of qualified housing will limit access to housing for some families with children, and some independent children.
- Some children who require help with housing costs to live independently are not guaranteed support.
- Legislation fails to provide for housing, or access to housing to be determined by reference to need or vulnerability, including vulnerability by reason of age.

80. We have also found that:

- Access to social security benefits and housing in Jersey is governed by legislative regimes which discriminate between children based on their status or that of their parent(s) or caregiver.
- The AHG discriminates amongst those in housing need based on residence status, rather than by vulnerability.
- The AHG discriminates against children as only adults may apply.

Protection from Harmful Substances (Article 33)

81. The Misuse of Drugs (Jersey) Law 1978 criminalises the possession and supply of illegal drugs, providing protection for children from the distribution of harmful narcotics. Regulations prohibit the sale of cigarettes to under 18s,¹⁰⁹ and ban smoking in most public spaces.¹¹⁰ Regulations also prohibit the sale of nicotine inhaling devices to under 18s.¹¹¹ The Licensing (Jersey) Law 1974 restricts and regulates the consumption of alcohol by children and young people under the age of 18 and the sale and serving of alcohol to under 18s.

Collated Findings: Disability, Basic Health and Welfare

82. We have found the following gaps in SoJ legislation, or policy in areas where legislation might be anticipated, in the area of Disability, Basic health and Welfare:

Article 6

- a) The right to development is not recognised in legislation.

¹⁰⁹ Restriction on Smoking (Sales of Cigarettes to Children (Jersey) Regulations 1992.

¹¹⁰ Restriction on Smoking (Workplaces) (Jersey) Regulations.

¹¹¹ Protection of Children (Nicotine Inhaling Products) (Jersey) Regulations 2016.

- b) SoJ does not have framework legislation to protect the environment, or to address issues such as localised air pollution or environmental contamination.
- c) The Children Law does not specify which relevant authorities (other than police or Ministers) are empowered, or have responsibility, to take action to protect children.
- d) The Children Law does not include a general requirement on the Minister (or any authority) to take action to promote the welfare of all children in Jersey.
- e) The Children Law does not impose a duty on the Minister to take action to promote the best interests of all children in Jersey.
- f) Statutory protection against harm or neglect inflicted by care-givers does not extend to children aged 16/17 years.
- g) The statutory requirement to protect a child from FGM does not extend to children aged 16/17 years.
- h) The statutory minimum age for employment is below the recommended minimum working age.
- i) There is no legal minimum wage for children under compulsory school age.
- j) Legislation requiring adults to ensure that children use seatbelts does not extend to children aged 15 years or older.
- k) The statutory requirement to use of cycle helmets does not extend to children aged 14 years or older.

Article 18(3)

- l) Legislation (rather than policy) should underpin support for an adoptive parent(s) on an equivalent basis as maternity allowance.

Article 23

- m) The Children Law does not expressly recognise a disabled child as a 'child in need' to help ensure access to additional resources.
- n) The Education Law does not guarantee the right of a child aged under 16 with special educational needs to have their views taken into account when a decision is made about their education.

Article 24

- o) SoJ legislation establishes a scheme under which a dependent child's access to GP and other primary healthcare services will be denied if their parent(s) or carer(s) is not eligible for health insurance, or is unable to meet the criteria to receive the benefit of health insurance.

- p) Independent children may be denied access to healthcare based on their residence or employment status, and due to their inability to meet status-based eligibility criteria.
- q) There is no SoJ legislation which specifies the amount spent on health.
- r) The Charging Policy deals with issue which are anticipated as matters for legislation and is expressly and directly discriminatory as it allocates health resources by reference to status, based on residence and/or employment.
- s) The Charging Policy may lead to children being denied the right to life and development.
- t) Regulations should specify when mental health treatment may be administered without the consent of a child.

Articles 26 and 27

- u) The statutory tests applied to determine adult eligibility for income support may result in children being denied the right to benefit from social security.
- v) Statutory sanctions imposed on adults for leaving work without good cause will deny children the benefit of social security.
- w) Restrictions on the availability of qualified housing will limit access to housing for some families with children, and some independent children.
- x) Some children who require help with housing costs to live independently are not guaranteed support.
- y) Legislation fails to provide for housing, or access to housing to be determined by reference to need or vulnerability, including vulnerability by reason of age.
- z) Access to social security benefits and housing in Jersey is governed by legislative regimes which discriminate between children based on their status or that of their parent(s) or caregiver.
- aa) The AHG discriminates amongst those in housing need based on residence status, rather than by vulnerability.
- bb) The AHG discriminates against children as only adults may apply.

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Areas Covered

83. This chapter covers topics dealt with under section 8 of the Committee's Reporting Guidelines,¹¹²i.e. Education, Leisure and Cultural Activities, and under chapter 7, Education, Leisure and Cultural Activities, in the Preliminary Report (Appendix 1).

84. The Reporting Guidelines list the most relevant UNCRC articles and General Comments¹¹³ on Education, Leisure and Cultural Activities as:

- UNCRC Article 28, 29 and 31.¹¹⁴
- General Comment No.1 (2001), on the aims of education.
- General Comment No. 7 (2005), on implementing children's rights in early childhood.
- General Comment No. 9 (2006), on the rights of children with disabilities.
- General Comment No. 11 (2009), on indigenous children and their rights under the Convention.
- General Comment No. 17 (2013), on the right of the child to rest, leisure, play, recreational activities, cultural life and the Article

85. In considering the current legislative position as regards SoJ, this Chapter also takes account of the following General Comments which, although not specifically mentioned in the Reporting Guidelines, include important information relevant to education:

- General Comment No. 4 (2003), on adolescent health and development.
- General Comment No. 6 (2005), on the treatment of unaccompanied and separated children.
- General Comment No. 8 (2006), on the right of the child to protection from corporal punishment.

¹¹² Note 3.

¹¹³ Note 7.

¹¹⁴ Note 1.

86. The Reporting Guidelines confirm a number of areas that governments should address when reporting to Committee in relation to education. These are:

- The right to education, including vocational training and guidance.
- The aims of education (Article 29) with reference also to the quality of education.
- Cultural rights of children belonging to indigenous and minority groups.
- Education on human rights and civic education.
- Rest, play, leisure, recreation and cultural and artistic activities.

87. While not all the areas covered in the Reporting Guidelines require States to introduce legislative measures of implementation, it is anticipated that legislative measures, including framework legislation, will be amongst the measures introduced.

Education (Article 28)

88. Along with Article 29 (the aims of education, below), Article 28 (the right to education) promotes the development of the child and protects and promotes their inherent dignity. Education should be ‘designed to provide the child with life skills, to strengthen the child’s capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values.’¹¹⁵ The Committee has explained that education goes beyond formal schooling to include life experiences and learning processes to enable children to develop and to live a full life within society.¹¹⁶ Based on our review of the Committee’s General Comments listed above we have identified issues of particular concern to the Committee as:

- The role of the State in ensuring the child may access education.
- The role of the State in supporting early years/pre-school educational opportunities.
- The existence of a framework of legislation around early years education and development, and a co-ordinated multi-sectoral approach in which the best interests of the child are uppermost.
- The provision of free, compulsory primary education, and secondary education that is available and accessible without discrimination.
- The provision of safe, well-functioning school and recreational facilities.

¹¹⁵ General Comment No.1, note 7, para.2.

¹¹⁶ Ibid.

- The prohibition of violence and abuse, inhuman and degrading treatment in school, both by school personnel as well as among students.
- The promotion of healthy behaviours through topics within the school curricula.
- The abolition of child labour to prevent interference with education.
- Equal opportunities for education for disabled children and adolescents, for indigenous children and for separated and unaccompanied children, including those with special needs.

Registration of births for education purposes

89. For education purposes, Customer and Local Services (responsible for registration) advise the Education Department when a child is in Jersey.¹¹⁷ The Marriage and Civil Status (Jersey) Law 2001 (Marriage Law) requires all births to be registered and places a duty on parents, or in their absence, anyone assisting at the birth, to notify the registrar within 21 days of the birth, and an obligation on the registrar to register a birth on the island.¹¹⁸ When someone moves to the island with a child the Housing and Work Law requires them to notify the Minister within 3 months.¹¹⁹

Early years

90. The Minister has power under the Education Law to establish nursery schools and nursery classes in schools, and to give financial assistance to children below compulsory school age for the purposes of promoting education.¹²⁰ SoJ funds 20 hours/week of free nursery education for 38 weeks a year in the year before a child is over compulsory school age. Additional free hours may be available to children in households claiming income support or who would be, but for a failure to meet the residence requirements, or to children who are looked after,¹²¹ or for other reasons.¹²²

¹¹⁷ See:

<<https://www.gov.je/LifeEvents/MovingToJersey/WhenYouArrive/Pages/RegisterJerseyResident.aspx>> accessed 5th August 2020.

¹¹⁸ Articles 50 and 51.

¹¹⁹ Article 8.

¹²⁰ Articles 8 and 10.

¹²¹ See: <<https://www.gov.je/Education/Preschool/Pages/NurseryEducation.aspx>> and *Jersey Premium Policy*

<<https://www.gov.je/SiteCollectionDocuments/Education/P%20Jersey%20Premium%20Policy%20200128%20JP.pdf>> both accessed 5th August 2020.

¹²² See: *Policy for the application and awarding of additional hours for a child in a States' nursery class due to an educational, developmental or family reason:*

91. SoJ policy states that British and EEA citizens, and third country nationals with the appropriate visa may access publicly funded nursery education in Jersey.¹²³

92. The Education Law provides a framework for development for early years education. While there is provision for nursery education in the year before the child reaches compulsory school age, there is no legislative framework for provision in early childhood, including education. The Jersey Curriculum applies from Key Stage 1 and does not cover Early Years/early childhood. However, the early years foundation stage curriculum (non-statutory) is taught up to the end of the Reception year.¹²⁴

Primary and secondary education

93. The Education Law requires that all children receive an education when of compulsory school age, defined as a period starting on the first day of the school term in which the child's 5th birthday falls, and ending on 30th June in the school year in which the child attains 16, and places a duty on Ministers to ensure that appropriate education is available,¹²⁵ and a duty on parents to ensure that children of compulsory school age receive full time education appropriate to the child's age, ability and aptitude and any special educational needs they may have.¹²⁶ Policy explains that free primary and secondary school education is available to everyone of compulsory school age in Jersey provided they meet immigration status conditions.¹²⁷ SoJ policy also states that British and EEA citizens, and third country nationals with the appropriate visa may access publicly funded primary and secondary education in Jersey.¹²⁸

<<https://www.gov.je/SiteCollectionDocuments/Education/P%20Additional%20Hours%20for%20a%20Child%20in%20a%20States%20Nursery%20Policy%2020170227%20KP.pdf>> accessed 5th August 2020.

¹²³ See: *Access to Publicly Funded Education*:

<<https://www.gov.je/SiteCollectionDocuments/Education/P%20Access%20to%20Publicly%20Funded%20Education%2020160803%20KP.pdf>> accessed 5th August 2020.

¹²⁴ Information provided by GoJ, 15th September 2020, see:

<<https://www.foundationyears.org.uk/files/2012/03/Development-Matters-FINAL-PRINT-AMENDED.pdf>> accessed 15th September 2020.

¹²⁵ Article 2 and 11.

¹²⁶ Article 12.

¹²⁷ Note 123.

¹²⁸ Ibid.

94. Under the Education Law the Minister may provide transport and clothing in order to facilitate the attendance of a child at school.¹²⁹

95. Under the Education Law the Minister may approve a request for a child of compulsory school age to be educated otherwise than at school, provided they are satisfied that the child will receive an education that is at least as good as that provided in school.¹³⁰ The Minister also has power under the Education Law to apply for an order aimed at ensuring that a child of compulsory school age is properly educated.¹³¹

96. As a matter of policy 'Jersey Premium' is available to children in primary and secondary education.¹³² This is paid for 5 years in respect of an eligible child, and is intended to support the education of children who are or have been 'looked after' or who are living in a household that has recently claimed income support.¹³³ Jersey Premium is available on application to households which would be eligible for income support but for the fact that they have not lived in Jersey for 5 years, provided the adult in the household is 'registered' in accordance with the Housing and Work Law.¹³⁴

Higher education

97. Higher/tertiary education is available in Jersey free up to the age of 19. Under the Education Law a means-tested Discretionary Grant system is available to support students undertaking courses of higher education either on or off island. The grant contributes to both tuition and living costs.¹³⁵

98. Access to publicly subsidised post-16 education and further education (19+ years) is governed by policy.¹³⁶ In addition to the requirement that those accessing post-16 education and further education must be a British or EEA citizen or a third country national with the appropriate visa, conditions relating to ordinary residence apply to British and EEA nationals in respect of post-16 education if the student is not

¹²⁹ Articles 23 and 24.

¹³⁰ Articles 3 and 13(2).

¹³¹ Article 14 and Schedule 3.

¹³² Note 121.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Article 51. See also: Education (Grants and Allowances) (Jersey) Order 2018.

¹³⁶ Note 123.

living with parents, or moving from compulsory education in Jersey. To access higher (19+) education, the student must have appropriate residence registration status, and meet ordinary residence conditions.¹³⁷

Provision of well-functioning schools: health risks

99. The Health and Safety at Work (Jersey) Law 1989 places a general duty on employers to protect not only employees, but others who might be affected, from risks to their health and safety.¹³⁸ Duties are also placed on employees to take reasonable care for the health and safety of others who might be affected by their acts or omissions at work.¹³⁹ SoJ does not have occupier liability legislation to ensure that public buildings, such as schools, are safe. We are informed this is covered by common law.¹⁴⁰

100. Under the Water (Jersey) Law 1972, the owner or occupier of any premises can require the Jersey New Waterworks Company Ltd to provide water suitable for domestic purposes to those premises, which will include schools.¹⁴¹

Prohibition of violence and abuse, inhuman and degrading treatment

101. Under the Education Law head teachers are responsible for determining appropriate standards of behaviour in school, and how those standards will be enforced.¹⁴²

102. The Human Rights Law gives effect in SoJ domestic law to rights and freedoms guaranteed under the ECHR, Article 2 of which prohibits inhuman and degrading treatment. The Children Law provides specific protection for children, including in school. This law has been amended to remove Article 35(5), which exempted the actions of a parent(s), teacher or anyone with having lawful control or charge of a child from the offence of causing harm to, or neglecting a child under the age of 16.

¹³⁷ Ibid.

¹³⁸ Article 5.

¹³⁹ Article 4.

¹⁴⁰ Meeting with GoJ officials, 5th August 2020.

¹⁴¹ Article 7.

¹⁴² Article 35.

103. The Education Law permits the use of reasonable physical restraint in education settings.¹⁴³ The legislation explains that this provision does not authorise the use of corporal punishment, nor does physical restraint constitute corporal punishment if the purpose of the restraint is to avert personal injury or damage to property.¹⁴⁴ The SoJ Education Department refers to the use of restraint in the SoJ Education Department Child Protection Policy, which states that restraint should be used in accordance with the Education Department Restraint Policy¹⁴⁵ and ‘... *only be used as a last resort after other strategies included in the establishment’s behaviour policy. Physical restraint always carries a risk to the child or staff who may be harmed, physically or emotionally. Inappropriate or excessive use of restraint can lead to an allegation of assault*’.¹⁴⁶ The policy states that:

- Restraint should not be used as a punishment.
- When force is unavoidable, it must be used in ways that maintain the safety and dignity of all concerned.
- Restraint should only be used in the context of wider behaviour policies and procedures which promote positive behaviour.

104. The Education Department Policy: Positive Behaviour, Exclusions and Part-Time Timetables includes a comprehensive list of negative behaviours that are not permitted by teaching staff towards pupils.¹⁴⁷

¹⁴³ Article 36A.

¹⁴⁴ Ibid. In General Comment 8 (note 7) para 15, the Committee recognises that there may be ‘...*exceptional circumstances in which teachers...may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it.*’ It notes that the ‘...*principle of the minimum necessary use of force for the shortest necessary period of time must always apply*’. The Committee stresses that methods used must be safe and proportionate to the situation and detailed training and guidance must be given to ensure that the deliberate infliction of pain is not used as a form of control.

¹⁴⁵ We have been unable to locate a ‘Restraint Policy’. We have found the Education Department Policy: *Positive Behaviour Exclusions and Part-Time Timetables*, : <https://www.gov.je/SiteCollectionDocuments/Education/P%20Positive%20Behaviour%20Exclusions%20and%20Part-Time%20Timetables%20Policy.pdf> accessed 5th August 2020.

¹⁴⁶ *Child Protection Policy*, : <https://www.gov.je/SiteCollectionDocuments/Education/P%20Child%20Protection%20Policy%2020160629%20SDM.pdf> accessed 5th August 2020, para 8.3.

¹⁴⁷ Note 145. The policy states that teachers should not:

- physically punish a pupil or to verbally threaten to do so, this includes the use of physical interventions.

Promotion of healthy behaviours

105. Under the Education Law responsibility for the curriculum lies with the Minister for Education, in consultation with the Jersey Curriculum Council.¹⁴⁸ The legislation states that the Minister must ‘... *have regard to the need for the Jersey Curriculum to be balanced and broadly based, and to prepare children for the opportunities, responsibilities and experiences of adult life.*’¹⁴⁹

106. The PHSE (Personal, Social, Health and Economic) Education Policy includes Health and Wellbeing as a topic, as well as Relationships and Living in the Wider World.¹⁵⁰

The abolition of child labour

107. Unless a child is pursuing a work experience opportunity organised by or approved by the head teacher of the school they attends, the Education Law makes it unlawful for anyone to employ a child of compulsory school age during the hours the child’s school is open for teaching.¹⁵¹ The Children Law establishes a minimum age of employment of 13, and legislation restricts both the number of hours and when those hours can be worked by a child.¹⁵² The Children Law also places restrictions on work that would prejudice attendance at school.¹⁵³ The employment of children in SoJ is dealt with in more detail under Disability, Basic Health and Welfare. The statutory

-
- deprive pupils of food or drink.
 - shout in anger.
 - display aggressive verbal or non-verbal actions or behaviours.
 - direct a parent(s) or family member to impose sanctions against a pupil.
 - use demeaning tasks or punishments such as wearing inappropriate clothing
 - withhold medical treatment.
 - conduct personal body searches (where significant concern exists a senior manager should be contacted or support of the police should be sought).
 - lock a pupil in a room or prevent them from leaving a room (except in very extreme situations of high risk).

¹⁴⁸ Article 16(1).

¹⁴⁹ Article 16(4).

¹⁵⁰ *Jersey Curriculum PHSE including Citizenship*, :

<<https://www.gov.je/SiteCollectionDocuments/Education/ID%20Jersey%20Curriculum%20PSHE%20including%20Citizenship%2020160531%20PH.pdf>> accessed 5th August 2020.

¹⁵¹ Article 26.

¹⁵² Article 48. See also: Children (Regulation of Employment) (Jersey) Order 2011.

¹⁵³ *Ibid.*

minimum age for employment is below the recommended minimum working age and may prejudice a child's ability to participate on education.

108. Although there are restrictions on the number of hours children can work and the times when children can work those hours, anecdotal evidence from a meeting with GoJ¹⁵⁴ suggests that the predominance of family-owned and run businesses in Jersey means children are being required to work for the family business for longer hours than permitted by the Children Law, putting their education at risk. NB this conclusion is based on anecdotal evidence. We appreciate that this is not the best evidence but it is evidence that raises an issue which, in our assessment, is of such significance for children that it merits inclusion in our report.

Equal opportunities for education

109. The Discrimination Law prohibits discrimination based on protected characteristics of race, sex, sexual orientation, gender reassignment, age, pregnancy and maternity, and disability. The Discrimination Law specifically prohibits discrimination on any of these grounds in respect of allowing access to a school (including any conditions placed on allowing access)¹⁵⁵ and in respect of access to any benefits, or expulsion or any other detriment.¹⁵⁶

110. The Education Law places a duty on the Minister to make available appropriate, free provision for all children with special educational needs.¹⁵⁷

111. The Education Law provides that children who have special educational needs will be educated in a school which is not a special school unless this is incompatible with the wishes of the child's parent(s), or the child themselves, but only if the child is

¹⁵⁴ 11th December 2019.

¹⁵⁵ Article 21(1).

¹⁵⁶ Article 21(2).

¹⁵⁷ Articles 4 and 28. The Committee, in its Concluding Observations on the UK State Party in 2016 (note 4) recommended that the UK introduce: '*comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions*' and '*ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them, including on access to and choice of personal support and education*'. Para. 57.

aged 16 or older.¹⁵⁸ (See discussion under Disability, Basic, Health and Welfare, Disability (Article 23)).

112. Based on the above, all children of compulsory school age in Jersey should receive an education. To access to publicly funded education at nursery, primary and secondary level (up to end of compulsory school age) non-British, and EEA nationals must have an appropriate visa.¹⁵⁹ There is no legislation or policy which deals with the situation of children who do not meet visa requirements.

113. There is no legislative provision to support children who do not speak English to learn the language and therefore access education in Jersey, but support is available for children whose first language is not English.¹⁶⁰ (See further sections on Jèrriais language, below, and under Special Protection Measures).

114. The Discrimination Law does not include religion and belief as protected characteristics, potentially leaving some children unprotected from discrimination in respect of access education.

Findings: Article 28

115. SoJ legislation provides a comprehensive scheme to meet the requirements of Article 28. However, we have found the following gaps in SoJ legislation:

- There is no legislative framework for educational provision in early childhood.
- The Children Law does not protect children against having their education put at risk through employment by a family run business.
- The statutory minimum age for employment is below the recommended minimum working age and may prejudice a child's ability to participate on education.
- There is no legislation to require support to be provided to children who do not speak English to learn English, or to support participation in education.

¹⁵⁸ Article 29.

¹⁵⁹ See: *Access to Publicly Funded Education*:

<<https://www.gov.je/SiteCollectionDocuments/Education/P%20Access%20to%20Publicly%20Funded%20Education%2020160803%20KP.pdf>> accessed 5th August 2020.

¹⁶⁰ See: <<https://www.gov.je/caring/childrenandfamilieshub/pages/eal.aspx>> accessed 20th August 2020.

- There is no legislation which ensures the right of children who do not meet visa requirements to participate in education.
- The Discrimination Law does not prohibit discrimination on religious ground, generally or in relation to access to education.

The Aims of Education (Article 29)

116. The Committee emphasises a qualitative dimension to the right to education set out in Article 28. Article 29 sets out 5 aims of education linked to the realisation by the child of their human dignity and rights. This includes:

- The holistic development of the full potential of the child.
- Development of respect for human rights.
- Providing an enhanced sense of identity and affiliation.
- The child's socialisation and interaction with others.
- The child's socialisation and interaction with the environment.

117. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- The incorporation into legislation of the aims of education.
- The removal of discrimination and discriminatory practices which would prevent a child receiving an education of the kind envisaged in Article 29.
- The eradication of violent or bullying practices within schools so that the school environment reflects the principles promoted in Article 29.
- The inclusion of education about human rights, and specifically the human rights of children.
- The role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education.

The aims of education

118. The Education Law makes provision for education in Jersey to '*...promote the spiritual, moral, intellectual, cultural, social and physical development of the people of Jersey and, in particular, of the children of Jersey*'.¹⁶¹ It also provides for the Jersey

¹⁶¹ Article 6.

Curriculum to be ‘...*balanced and broadly based, and to prepare children for the opportunities, responsibilities and experiences of adult life*’.¹⁶²

119. Under the Education Law, parent(s) have the right to withdraw their child from religious education and from worship in schools without consulting the child.¹⁶³ This fails to recognise the possibility that a child may take a different view to their parent(s), and has potential to deprive the child of this element of education against their will

Removal of discriminatory practices

120. The Discrimination Law specifically includes provisions in respect of education to protect against discrimination. The Discrimination Law does not list religion and belief as a protected characteristic, with potential that discriminatory practice based on religion or belief may lead to denial of an education in accordance with Article 28 and 29.

121. Jèrrais, the native language of Jersey, is available for all children to learn in schools and has been since 1999. The recent Jèrrais plan¹⁶⁴ 2017-2019 was designed to create a culture where the language is used. There are no statutory provisions to underpin the teaching of Jèrrais in schools in Jersey.

Removal of violent behaviours

122. See above *Prohibition of violence and abuse, inhuman and degrading treatment*. Schools are responsible for developing, disseminating and maintaining a ‘counter-bullying’ policy with the support of GoJ’s Children Young People Education and Skills department.¹⁶⁵ The policy includes a sample policy for schools to adopt to counter bullying.¹⁶⁶

¹⁶² Article 16(4).

¹⁶³ Article 20.

¹⁶⁴ Available here:

<<https://www.gov.je/Government/PlanningPerformance/Pages/MinisterialDecisions.aspx?showreport=yes&docid=E165F853-C8C6-4C68-83CC-D2E12BE3A775>> accessed 24th July 2002.

¹⁶⁵ *Children, Young People, Education and Skills Counter Bullying Policy*, :

<<https://www.gov.je/SiteCollectionDocuments/Education/P%20Counter%20Bullying%20Policy%2020190722%20MV.pdf>> accessed 5th August 2020.

¹⁶⁶ Ibid, 9 Appendix A.

Inclusion of human rights

123. Education on human rights and the human rights of children is not included in the Jersey Curriculum at all stages. Human rights education is included at key stage 4.¹⁶⁷

Monitoring and evaluation

124. Under the Education Law the Minister has a duty to evaluate the quality of education provided by each school in Jersey.¹⁶⁸ In 2019, the Jersey Schools Review Framework was adopted pursuant to the legislative provisions for the evaluation of education.¹⁶⁹ The review process includes consultation with parents through an online survey and through further meetings etc. if the response to the survey is low.¹⁷⁰ According to the Review Framework, the review team should also meet with pupils and discuss aspects of their education with them.¹⁷¹ There is a School Council Network in SoJ, set up in response to the Care Inquiry which could provide a consultation framework.¹⁷² However, while there is a statutory obligation to evaluate education in Jersey, the requirement to include children's views in any review is set out in a School Review Framework.

Exclusions

125. The power to suspend or expel a pupil from school is contained in the Education Law.¹⁷³ Only a headteacher may expel a pupil and must obtain the written permission of the Chief Officer and the school's governing body to do so.¹⁷⁴ Schools are expected to comply with the Positive Behaviour, Exclusions and Part Time Timetables policy

¹⁶⁷ See <[PSHE curriculum for KS4](#)> accessed 20th August 2020.

¹⁶⁸ Article 64.

¹⁶⁹ GoJ decision Reference, MD-ESC-2019-0006, : <<https://www.gov.je/Government/PlanningPerformance/Pages/MinisterialDecisions.aspx?showreport=no&docid=3753BE30-F9A1-441C-8967-D6CEF386E70C>> accessed 24th July 2020.

¹⁷⁰ *Jersey Schools Review Framework Handbook for Reviewers*, : <<https://www.gov.je/SiteCollectionDocuments/Education/P%20Jersey%20Schools%20Review%20Framework%2020191001%20PH.pdf>> accessed 24th July 2020, paras 61-65.

¹⁷¹ Ibid, e.g. paras 73, 84, 87 and 113-118.

¹⁷² See for example: <<https://statesassembly.gov.je/ScrutinyReports/2018/Report%20-%20Response%20to%20the%20Care%20Inquiry%20-%20Update%20Report%20Quarter%20Four%202018%20-%202014%20December%202018.pdf>> accessed 5th August 2020.

¹⁷³ Article 36

¹⁷⁴ Ibid.

which requires schools to seek the views of the child and the parents before suspension/exclusion.¹⁷⁵ Excluded pupils are to ‘...*be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and ability to understand.*’¹⁷⁶ Although the views of the parent(s) and the child should be taken into account prior to suspension/exclusion, only the parent(s) of a child who is under 18 can appeal against a decision to suspend/exclude, not the child.¹⁷⁷

126. The Positive Behaviour, Exclusions and Part Time Timetables policy includes provision for students to be put onto a part time timetable, either to facilitate recovery from a medical condition, or where the child has ‘...*complex social, emotional and mental health (SEMH) and related needs*’.¹⁷⁸

127. The Education Law makes provision for children in youth detention, and children who have been permanently excluded to be educated,¹⁷⁹ but evidence from the Jersey Youth Justice Review suggests these are not effective in practice.¹⁸⁰

Non-discrimination and equality

128. Issues under this heading have already been discussed above.

The secure estate

129. The Jersey Premium is available to schools in respect of children in care and is designed to improve educational opportunities for all children, which will include those in the secure estate.¹⁸¹

130. While the Education Law ostensibly requires that all children of compulsory school age should receive an appropriate full time education, a recent report suggests

¹⁷⁵ Note 145.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid, page 19.

¹⁷⁹ Article 12(1) and 13.

¹⁸⁰ Jersey Youth Justice Review:

<<https://www.gov.je/SiteCollectionDocuments/Crime%20and%20justice/R%20Youth%20Justice%20Review%2020190529.pdf> -> accessed 24th July 2020.

¹⁸¹ Note 121.

that in practice, opportunities for education within the secure estate on SoJ are limited, particularly for young people over the age of 16.¹⁸²

Findings: Article 29

131. There are a number of provisions on the aims of education which promote the objectives of Article 29, However, we have found the following gaps in SoJ legislation:

- The Education Law does not require education on human rights and the human rights of children to be included in the Jersey Curriculum at all stages.
- There is no statutory right for children to be consulted on any decision to withdraw them from religious education.
- The Discrimination Law does not list religion and belief as a protected characteristic, with potential that discriminatory practice based on religion or belief may lead to denial of an education in accordance with Articles 28 and 29.
- There are no statutory provisions to underpin the teaching of Jèrrais in schools in Jersey.
- There is no legislative requirement to include children's views in the statutory review of education.
- Legislation does not permit a child who is under 18 a right to appeal in their own name against a decision to suspend/exclude them from education.
- Legislation appears ineffective to ensure an education for children who are held in the secure estate.

Leisure and Cultural Activities (Article 31)

132. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- That children should be able to enjoy leisure and cultural activities free from discrimination, and that legislation should be in place to guarantee access to leisure and cultural activities to all children.
- There should be clear and explicit provisions for the protection and exercise of the specific rights of disabled children.

¹⁸² Note 180.

- That legislation supports a culture that allows children leisure time and the opportunity to engage in cultural activities.
- That the best interests of children should be taken into account in all legislative measures likely to impact on their Article 31 rights, and children have the opportunity to be involved in the legislative process.
- There should be legislative provisions in place to facilitate the full enjoyment of Article 31.
- That non-state actors should comply with Article 31.
- Measures are taken relating to online safety of children, including reducing the impunity of adults.

Opportunities for leisure and cultural activities

133. The Discrimination Law prohibits discrimination based on specified protected characteristics. This provides a framework within which children should be treated equally in respect of those characteristics. Religion is not a protected characteristic. Children and young people may find themselves vulnerable to discrimination on the grounds of religion in access to cultural and leisure activities, with no adequate protection in law.

134. Much of a child's time in Jersey is allocated to receiving a full-time education. Although we have been unable to find a definition of full-time education, children between the ages of 5-16 are in school 5 days a week, Monday-Friday. The Education Law is the primary framework to ensure children receive their education rights. Neither the Education Law, nor the Children Law, nor any other SoJ legislation guarantees the child's right to rest and play and to engage in leisure and cultural activities.

135. A review of the status of culture heritage and the arts in Jersey in 2018 identified a low level of investment in culture, heritage and the arts and reported that 1 in 3 young people say that arts and culture are essential to their lives.¹⁸³ The document only mentions 'children' on 4 occasions, but does recognise the importance of culture and the arts to young people. However, none of the recommendations in the report refer

¹⁸³ *Jersey Culture, Arts and Heritage Strategic Review and Recommendations*, : <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20180222%20SoJ%20Culture%20Arts%20and%20Heritage%20Strategic%20Review%20vFINAL.pdf> accessed 24th July 2020.

specifically to children, and there is no evidence of progress towards achieving its recommendations. The report makes no reference to the rights contained in UNCRC Article 31 in relation support for arts and culture in Jersey.

Removal from Public Spaces

136. The Policing of Parks (Jersey) Regulations 2005 provide for the regulation of behaviours within parks, ensuring safe places for children. We have been unable to locate any SoJ legislation which makes specific provision for the safety of other leisure or play facilities that children may use, e.g. indoor play facilities operated by private sector actors. This is otherwise covered under general health and safety regulations (discussed above) and the common law.

137. SoJ criminal law includes offences such as ‘disorderly conduct’,¹⁸⁴ based on the behaviour of the individual rather than children as a group. There is no legislation which criminalises or otherwise makes unlawful the behaviour of individual children, or children as a group, on the basis that it is deemed ‘antisocial’, or which would allow children to be removed from public spaces for non-criminal activities.¹⁸⁵

Online safety

138. Criminal offences in Jersey include:

- Taking, allowing to be taken or making indecent photographs or pseudo-photographs of children,¹⁸⁶ and related offences relating to possession and distribution.¹⁸⁷
- Making, possessing, distributing or showing a prohibited image of a child.¹⁸⁸
- Causing a child to watch or be present during a sexual act.¹⁸⁹
- Sexual grooming of a child.¹⁹⁰

¹⁸⁴ Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008, Article 2.

¹⁸⁵ Such as is provided for in the Crime and Policing Act 2014 in the UK.

¹⁸⁶ Protection of Children (Jersey) Law 1994, Article 2.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Sexual Offences (Jersey) Law 2018, Article 14.

¹⁹⁰ Ibid, Article 15.

139. Many of the criminal offences contained in SoJ legislation do not specifically deal with online safety of children. However, some if not all, of the above offences are wide enough to cover acts taking place online.

Findings: Article 31

140. SoJ legislation deals with issues relating to leisure and cultural activities. However, we have found the following gaps in SoJ legislation:

- Neither the Education Law nor the Children Law guarantee the right to rest and play and to engage in leisure and cultural activities.
- Legislation does not provide comprehensive coverage to ensure that leisure or play facilities used by children are safe.

141. We also note that our findings concerning the failure to adequately protect children from the impact of employment on their education are equally relevant to play, leisure and cultural activities (Findings: Article 28).

Collated Findings: Education, Leisure and Cultural Activities

142. We have found the following gaps in SoJ legislation, or policy in areas where legislation might be anticipated, in the area of Education, Leisure and Cultural Activities:

Article 28

- a) There is no legislative framework for educational provision in early childhood.
- b) The Children Law does not protect children against having their education put at risk through employment by family run businesses.
- c) The statutory minimum age for employment is below the recommended minimum working age and may prejudice a child's ability to participate on education.
- d) There is no legislation to require support to be provided to children who do not speak English to learn English, or to support participation in education.
- e) There is no legislation which ensures the right of children who do not meet visa requirements to participate in education.
- f) The Discrimination Law does not prohibit discrimination on religious ground, generally or in relation to access to education.

Article 29

- g) The Education Law does not require education on human rights and the human rights of children to be included in the Jersey Curriculum at all stages.
- h) There is no statutory right for children to be consulted on any decision to withdraw them from religious education.
- i) The Discrimination Law does not list religion and belief as a protected characteristic, with potential that discriminatory practice based on religion or belief may lead to denial of an education in accordance with Articles 28 and 29.
- j) There are no statutory provisions to underpin the teaching of Jèrrais in schools in Jersey.
- k) There is no legislative requirement to include children's views in the statutory review of education.
- l) Legislation does not permit a child who is under 18 a right to appeal in their own name against a decision to suspend/exclude them from education.
- m) Legislation appears ineffective to ensure an education for children who are held in the secure estate.

Article 31

- n) Neither the Education Law nor the Children Law guarantee the right to rest and play and to engage in leisure and cultural activities.
- o) Legislation does not provide comprehensive coverage to ensure that leisure or play facilities used by children are safe.
- p) Findings concerning the failure to adequately protect children from the impact of employment on their education are equally relevant to play, leisure and cultural activities.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Areas Covered

143. This chapter covers topics dealt with under section 5 of the Reporting Guidelines,¹⁹¹ i.e. Family Environment and Alternative Care, and under chapter 5, Family Environment and Alternative Care, in the Preliminary Report (Appendix 1).

144. The Reporting Guidelines list the most relevant UNCRC articles and General Comments¹⁹² on family environment and alternative care as:

- UNCRC Articles 5, 9-11, 18(1-3), 20-21, 25 and 27(4).¹⁹³
- General Comment No.7 on implementing child rights in early childhood.

145. The Committee also requires States to take account of the Guidelines for the Alternative Care of Children (GACC) adopted by the UN General Assembly in 2010.¹⁹⁴ The Reporting Guidelines and GACC confirm a number of areas that governments should address when reporting on progress on family environment and alternative care. These are:

- Parental responsibility and guidance.
- Separation from parents.
- Family Reunification.
- Illicit transfer and non-return of children.
- Children deprived of family environment.
- Adoption.
- Periodic review of placements.
- Recovery of maintenance.

146. Concerning the imprisonment of parents, the Committee's concerns relate to:

¹⁹¹ Note 3.

¹⁹² Note 7.

¹⁹³ Note 1.

¹⁹⁴ General Assembly resolution 64/142 A/RES/64/142, :
<<https://digitallibrary.un.org/record/673583?ln=en>> accessed 7th August 2020.

- Provision of information to the child about the whereabouts of his/her parent(s),
- The use of non-custodial sentences where a sole/primary carer is facing detention or sentencing.
- Consideration of the best interests of the child during sentencing.
- Consideration of the best interests of the child in any decision making to remove a child born in prison or living with a parent(s) in prison.
- The need to notify child protection authorities whenever a person who has a child/children is imprisoned.

147. While not all the areas covered in the Reporting Guidelines require States to introduce legislative measures of implementation, it is anticipated that legislative measures, including framework legislation, will be amongst the measures introduced.

Parental Responsibility and Guidance (Articles 5 and 18(1) and (2))

148. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- The primacy of parents, caregivers and 'the family' in the development of the child, including through recognition of the evolving capacities of the child.
- The role of the State in supporting parents and caregivers in this role including through the reduction of harmful deprivations, disruptions and distortions in children's care; and taking action where young children's well-being may be at risk.
- The development of a systematic approach to law and policy making to provide for rights-based, multi-sectoral strategies to ensure that the best interests of the child are always the starting point for planning and service provision.

149. Areas covered by the GACC with significance for legislation are:

- Measures for the protection and guarantee of rights during pregnancy, birth and the breastfeeding period.
- Protection of the rights of adolescent parents, both as parents and as children, and the introduction of measures to protect their rights, in particular to education.
- Provision of support and services to siblings who have lost a parent(s)/caregiver and who wish to stay together under the guidance of a legal guardian.

Parental Responsibility

150. The Marriage Law places a duty on parents, or in their absence, anyone assisting at the birth, to notify the registrar within 21 days of the birth, and an obligation on the registrar to register that birth.¹⁹⁵ When someone moves to Jersey the Housing and Work Law requires them to notify the Minister within 3 months of any children who have come to the island with them.¹⁹⁶

151. The SoJ Preliminary Report (Appendix 1) states that the Children Law recognises the right of parents to bring up their children. The Children Law defines 'parental responsibility' as '*...all the rights, duties, powers, responsibilities and authority which the father of a legitimate child had in relation to the child and the child's property...save that rights in respect of custody shall not be exclusive.*'¹⁹⁷

152. Parental responsibility is governed by the Children Law. This provides that where the parents of a child are married at the time of the birth, they share parental responsibility.¹⁹⁸ Under the Children Law, if the parents are unmarried, the mother has parental responsibility for the child.¹⁹⁹ Since 2016 unmarried fathers who are named on their child's birth certificate have automatically had parental responsibility, otherwise the father may acquire parental responsibility through registration as the father, by making an application to the court for parental responsibility, or through agreement with the mother.²⁰⁰

153. The Children Law recognises the role of a person who may not have parental responsibility for a child, but who has care of the child and allows that person to 'do

¹⁹⁵ Article 50 and 51.

¹⁹⁶ Article 8. We have been informed (GoJ comment, 15th September 2020) that in practice the requirement for a resident to hold a registration card to access housing and employment means that children are recorded as having arrived in the island much sooner:

<<https://www.gov.je/LifeEvents/MovingToJersey/WhenYouArrive/Pages/RegisterJerseyResident.aspx>> accessed 15th September 2020.

¹⁹⁷ Article 1(1).

¹⁹⁸ Article 3(1).

¹⁹⁹ Article 3(2).

²⁰⁰ See:

<<https://www.gov.je/news/2016/pages/unmarriedfathersparentalresponsibility.aspx>> information provided by GoJ on 16th September 2020, accessed 16th September 2020. See also: Children (Jersey) Law 2002, Article 5.

*what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.'*²⁰¹

Support for persons with Parental Responsibility

154. SoJ legislation provides some statutory income and housing support for those with responsibility for children. This is discussed in the chapter on Disability, Basic Health & Welfare, including limitations.

Continuation of alternative care beyond 18

155. In 2020, it was announced that SoJ would be put in place a new 'statutory entitlement' for care leavers up until the age of 25.²⁰² A guide has been published detailing the support that a young person in care when they are 16 will be able to access across a number of areas of life including health and wellbeing, education and training, housing, finance, employment and relationships.²⁰³

Protection of adolescent parents

156. The GACC place an emphasis on preventing the need for alternative care and identify adolescent parents as a group in particular need of support, not only as parents but as children, with full access to their rights.²⁰⁴

157. Some protection will be provided for adolescent mothers as the Discrimination Law prohibits discrimination on grounds of pregnancy and maternity. Adolescent parents will also continue to benefit from rights in education (see Education, Leisure and Cultural Activities).

158. Income support provisions on SoJ are complex and are fully discussed under Disability, Basic Health and Welfare. Children over compulsory school age are able to claim income support provided they satisfy eligibility requirements and, if they are in an

²⁰¹ Article 4(2).

²⁰² See: <<https://www.gov.je/news/2020/pages/CareLeaversSupport.aspx>> accessed 7th August 2020.

²⁰³ *Guide for Young People Leaving Care:*

<<https://www.gov.je/SiteCollectionDocuments/Caring%20and%20support/ID%20Guide%20for%20Young%20People%20Leaving%20Care%20JW.pdf>> accessed 7th August 2020.

²⁰⁴ Note 194.

income support household with adults, that at least one of those adults is also eligible. A person aged under 25 is eligible for the housing component of income support if they are responsible for, and living with, a child. Otherwise support is at the discretion of the Minister.

Support for sibling groups

159. The GACC require mandatory protection for sibling groups that wish to stay together in the absence of a parent(s) or caregiver, provided there is a sibling willing and able to take on the role of ‘head of the household’.²⁰⁵ There should be provision for a legal guardian to be appointed to offer supervision and support, and for the ‘head of the household’ to be assured their rights as a child, as well as those as head of household.²⁰⁶ The Children Law provides for a guardian to be appointed in these circumstances.²⁰⁷ The legal guardian appointed in accordance with these provisions will have parental responsibility for the children concerned.

Findings: Article 5 and 18(1) and (2)²⁰⁸

160. In our view SoJ legislation provides support for those with parental responsibility in several areas. However, we note gaps SoJ legislation in relation to social security and housing under Disability, Basic Health and Welfare as relevant here.

Separation From Parents (Article 9)

161. UNCRC Article 9 requires that a child should only be separated from their parents if it is in the best interests of the child. Whether this is the case should be determined by competent authorities and should be subject to judicial review. The child (as well as all other interested parties) should have the opportunity to make their views known in any proceedings and should retain the right to maintain regular direct contact with both parents unless it is not in the child’s best interests. Based on our review of the Committee’s General Comments listed above and the GACC we have identified issues of particular concern as:

²⁰⁵ Ibid, para 37.

²⁰⁶ Ibid, para 37.

²⁰⁷ Article 7.

²⁰⁸ Article 18(3), UNCRC is dealt with under Disability, Basic Health and Welfare.

- That a child who has been relinquished or abandoned is able to access information about his origins.
- That there is an assessment of the child's situation to consider whether reintegration would be in the best interests of the child, which takes into account the child's immediate safety and well-being, as well as their longer-term care and development, and covers the child's personal and developmental characteristics.
- The existence of a frameworks to provide for adequate alternative care options, with priority to family and community-based solutions, and to ensure the availability of a range of alternative care options for emergency, short-term and long-term care, and a regulatory framework to ensure a standard process for the referral or admission of a child to alternative care.
- That the removal of children from their families should always subject to thorough investigation, be in accordance with the best interests of the child and only used as a measure of last resort.

Separation only in the best interests of the child

162. The Children Law provides a legislative mechanism for the making of a variety of orders including care orders,²⁰⁹ interim care orders,²¹⁰ child assessment orders,²¹¹ and emergency protection orders,²¹² all of which might involve separation of a child from its parent(s). The Children Law requires that when '*determining any question with respect to the upbringing of a child*', the 'welfare' of the child must be the primary consideration.²¹³ The Children Law sets out the circumstances in which a child may be separated from its parent(s).²¹⁴ It follows that separation must be in accordance with the law and subject to judicial review.²¹⁵

163. Under the Children Law, where a child is separated from its parents, the Minister also has a power to accommodate the child, even if the child has a parent(s) with

²⁰⁹ Article 24.

²¹⁰ Article 30.

²¹¹ Article 36.

²¹² Article 37.

²¹³ Article 2.

²¹⁴ For example, in relation to care orders, see Article 24(2)(b).

²¹⁵ The courts cannot use their inherent jurisdiction to consider matters under the Children Law. Children (Jersey) Law 2002 Article 76.

parental responsibility who can provide accommodation, if to do so would be to safeguard and promote the child's welfare.²¹⁶

164. The Children Law promotes the welfare of the child. It does not expressly prioritise the best interest of the child in matters to which it applies.

Participation of all parties, including the child

165. The Children Law requires, inter alia that the courts take account the ascertainable wishes and feelings of the child in decisions in respect of care orders, but not in respect of a child assessment order or emergency protection orders which would result in the separation of the child from the parent(s).²¹⁷

166. Before the Minister provides accommodation for a child, the Children Law requires that s/he must ascertain and give due consideration to the wishes of the child.²¹⁸ In the case of a care order, the Minister is expected to contact the parties named in the proceedings relating to contact and invite them to comment on proposed contact arrangements.²¹⁹

167. Children are empowered under the Children Law to bring certain applications themselves, but can only do so with leave of the court and leave can only be granted if the court is satisfied as to the child's understanding of proceedings.²²⁰ The Children Law provides that children can bring proceedings through a *guardian ad litem*.²²¹ The court can order that a child be separately represented in proceedings under the Children Law, where it '*...considers it desirable in the interests of a child...*' for the child to have such representation.²²²

168. When the court is considering an order under the Children Law for a child to be kept in secure accommodation,²²³ the court must inform the child of his or her right to

²¹⁶ Article 17(4).

²¹⁷ Article 2.

²¹⁸ Article 17(6).

²¹⁹ Article 27(11)(b)

²²⁰ See, for example, Article 27(2).

²²¹ Article 75(2).

²²² Article 75.

²²³ Article 22.

apply for legal aid, and must not exercise its powers if the child does not have legal representation unless the child has been informed of the right to apply for legal representation and has either refused or failed to apply for legal aid.²²⁴ However, it is noted that the Legal Aid Guidelines do not make express provision for the granting of Legal Aid in these circumstances.²²⁵

Contact

169. General Comment No.7²²⁶ and the GACC²²⁷, emphasise the importance of a child maintaining contact with both parents, provided it is in the child's best interests to do so. They also draw attention to the need to focus on reintegration, including contact with siblings,²²⁸ 'the family' (not just parents) as well as '*...friends, neighbours and previous carers*'.²²⁹

170. The Children Law provides for 'reasonable contact' for a child in care with a limited number of individuals including parents.²³⁰ The 'welfare of the child' must be the paramount consideration when courts in making an order for contact under this legislation,²³¹ and the court must take into account the '*...ascertainable wishes and feelings of the child concerned (considered in light of the child's age and understanding)*'.²³² The court may order contact with someone who had a residence order in respect of the child,²³³ or who had care of the child before the care order was made.²³⁴

²²⁴ Article 22.

²²⁵ Legal Aid Guidelines amended 07th June 2010, :

<<https://www.legalaid.je/pdfs/Legal%20Aid%20Guidelines%20final%20ver-020810.pdf>> accessed 24th July 2020.

²²⁶ Note 7.

²²⁷ Note 194.

²²⁸ Ibid, para 17.

²²⁹ Ibid, para 81.

²³⁰ Article 27.

²³¹ Article 2.

²³² Article 2(3)(a).

²³³ Article 27(1)(b).

²³⁴ Article 27(1)(c).

171. Under the Children Law a child in care may apply for an order for contact²³⁵ or for an order refusing contact²³⁶ with individuals named in the legislation (parents, a person with residence order or a person who had care of the child before the care order), but these do not include with siblings or others who might fall into a '*friends neighbours and previous carers*' category (caution required, see next footnote). In addition to a child's parents, or someone who had a residence order or who had care of the child prior to the care order, it is possible for any other person to apply for contact with the child with the leave of the court.²³⁷ The child does not have a reciprocal right to apply for contact with any person with the leave of the court. If a child assessment order is necessary, the court may make '*such directions as the court thinks fit with regard to the contact that the child must be allowed to have with other persons while away from home.*'²³⁸

172. In the case of an emergency protection order made under the Children Law the Bailiff can make directions as to contact that the child may or may not have with any named person,²³⁹ and subject to those directions, the application for the emergency order should allow the child reasonable contact with a range of people including their parents and '*...any person with whom the child was living immediately before the making of the order*',²⁴⁰ which would cover siblings in a way that is not covered by contact in respect of a care order.

173. When separation is instigated by the SoJ, by virtue of a care order or emergency protection order or assessment order, the Children Law provides for contact with either

²³⁵ Article 27(2).

²³⁶ Article 27(4).

²³⁷ Article 27(3)(b). The wording of the legislation is unclear. It is not immediately obvious whether the intention is to permit any person to be a named person, and able to apply for contact with a child, or if the named person is restricted to those persons named in the legislation. We have taken a narrow view in our report 9 (only those named in the legislation), but this may be incorrect. At a meeting with GoJ (16th September 2020) it was noted that the issue may be resolved by reference to cases dealing with contact.

²³⁸ Article 36(7)).

²³⁹ Article 37(4).

²⁴⁰ Article 37(10)(c).

parents or those in caring roles in respect of the child.²⁴¹ Under the Children Law the welfare of the child, not the child's best interests, is the paramount consideration when any order or directions relating to contact is made.²⁴²

Care home setting

174. Standard 5 of the Jersey Care Commission Standards for Children and Young People in Residential Care (Care Standards),²⁴³ published pursuant to powers derived from legislation,²⁴⁴ state that the child or young person will be helped to see and stay in touch with family and friends; contact will be in accordance with the wishes of the child/young person and will be facilitated and a record of contact will be kept. Where contact is to be restricted or monitored it must be discussed with the child and others involved in the child's care, and where contact with parents or other family members is difficult or inappropriate, arrangements should be made for the child to have contact with a 'significant adult' outside the care system.²⁴⁵

Contact in prison setting

175. Where the separation is initiated by SoJ through a custodial sentence imposed on a parent, their children may visit. The Prison (Jersey) Rules 2007 (Prison Rules) permit that prisoners are entitled to a minimum of one visit per week of at least 30 minutes duration.²⁴⁶ The Prison Rules are silent as to visits by children; however, the Jersey Citizens Advice website indicates the availability of visits by children under the age of 16 to the prison (HMP La Moye) in Jersey, providing they are accompanied by an adult and the parent/guardian agrees to the visit.²⁴⁷

²⁴¹ See Article 27 for contact provisions in relation to care orders; Article 37(10) for contact in relation to emergency protection orders; and Article 36(7) for contact in relation to child assessment orders.

²⁴² Article 2(1).

²⁴³ Jersey Care Commission Care Standards Children and Young People's Residential Care, : <<https://carecommission.je/wp-content/uploads/2019/02/JCC-Care-Standards-Care-Homes-CYP-2019v1..pdf>> accessed 10th August 2020.

²⁴⁴ Regulation of Care (Jersey) Law 2014, Article 15; Regulation of Care (Standards and Requirements)(Jersey) Regulations 2018.

²⁴⁵ Jersey Care Commission Care Standards Children and Young People's Residential Care, Standard 5.2

²⁴⁶ Rule 46(2).

²⁴⁷ See:

<https://www.cab.org.je/index.php?option=com_content&view=article&id=152:prison-4360&catid=22&Itemid=50> accessed 24th July 2020.

Provision of information

176. There does not appear to be any legislative provision requiring a child to be informed of a parent's whereabouts if separation is caused by the action of the State (i.e. arrest and detention, a prison sentence).

177. SoJ has a data protection regime governed by the Data Protection (Jersey) Law 2018 and the Freedom of Information (Jersey) Law 2011 and policed by the Jersey Office of the Information Commissioner. This protects an individual's personal information unless processing is, *inter alia*, required to fulfil a legal obligation.²⁴⁸

Sentencing decisions

178. Both Magistrates Court and the Royal Court may impose custodial sentences. The Magistrates Court Sentencing Guidelines²⁴⁹ do not make any specific reference to the impact a custodial sentence might have on any child or children of the person sentenced. There are no Royal Court Sentencing Guidelines.

Children born in or living in prison

179. According to the Prison rules, at the discretion of the prison Governor a female prisoner can keep a child aged under 9 months old with her in prison.²⁵⁰ Conditions may be imposed but the Governor must treat the best interests of the child as the paramount consideration.²⁵¹ There is no equivalent provision that applies to a male prisoner who has sole custody of a child/parental responsibility for a child at the time of sentencing.

180. There is no provision in the Prison Rules which would allow a child that has attained 9 months of age to remain with the mother, regardless of what might be in the child's best interests.

²⁴⁸ Data Protection (Jersey) Law 2018, Schedule 2 Part 2 section 7.

²⁴⁹ Magistrates Sentencing Guidelines:

<<https://www.jerseylaw.je/courts/pages/Sentencing-Guidelines.aspx>> accessed 24th July 2020.

²⁵⁰ Rule 62.

²⁵¹ Rule 62(c).

181. The Children Law makes provision for the Minister to provide accommodation for a child when ‘... *the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care.*’²⁵²

Assessment and investigations

182. The Children Law places a duty on the Minister to ‘make or cause to be made, such enquiries’, as the Minister considers necessary ‘...*to enable [him/her] to decide whether he or she should take any action to safeguard or promote the child’s welfare.*’

²⁵³ This is a general duty that arises if the Minister is informed that a child is subject to an emergency protection order or the Minister has ‘reasonable cause’ to suspect the child is suffering or is likely to suffer significant harm.²⁵⁴ The Minister is required to take the child’s best interests into account when considering whether a child who is subject to an emergency protection order should be placed in accommodation, and whether a child in police protection should be made the subject of an emergency protection order.²⁵⁵ However, best interests is not a governing factor in other provisions where a decision to remove a child from their parent(s) may result.²⁵⁶

Corporate parenting and children’s plan

183. Since the Preliminary Report (Appendix 1) was prepared Jersey has placed the Jersey Care Commission on a statutory footing under the Regulation of Care (Jersey) Law 2014, and has introduced a Corporate Parenting Policy Framework²⁵⁷ which applies once a child is taken into care (see below, Children Deprived of Family Environment).

²⁵² Article 17(c).

²⁵³ Article 42.

²⁵⁴ Article 42 (1)(b).

²⁵⁵ Article 42 (3)(c).

²⁵⁶ For example, Children (Jersey) Law 2002 Article 42(5).

²⁵⁷ Corporate Parenting Policy Framework:

<[https://www.gov.je/Government/Departments/StrategicPolicy/RespondingtoIndependenceJerseyCareInquiry/Pages/CorporateParent\(s\)ingPolicyFramework.aspx](https://www.gov.je/Government/Departments/StrategicPolicy/RespondingtoIndependenceJerseyCareInquiry/Pages/CorporateParent(s)ingPolicyFramework.aspx)> access attempted, 10th August, policy archived. We have been informed (GoJ comments, 15th September 2020) that legislation is being prepared to underpin corporate parenting in Jersey.

184. SoJ has adopted its Children and Young People's Plan initially for 2019-2023.²⁵⁸ One of the 4 pillars of this plan is that children should be able to '*Grow up Safely – feel part of a loving family and a community that cares*',²⁵⁹ to include the development of an outstanding social work practice. The document recognises that '*Where children cannot live with their family then government needs to step in to provide the love and nurture every child needs as well as ensuring equal life chances*'.²⁶⁰

Findings: Article 9

185. SoJ includes provisions to implement the rights of children separated from their parent(s), however, we have found the following gaps in the legislation:

- Under the Children Law 'welfare' is used in preference to best interests in relation to some orders where a child may be separated from its parent(s).
- The requirement to take account of the ascertainable wishes and feelings of the child when action is taken under the Children Law does not apply to child assessment orders or emergency protection orders.
- The Children Law does not ensure a child who is separated from their parent(s) is able to maintain contact with their family, friends and acquaintances.
- There is no legislative provision requiring a child to be informed of the whereabouts of their parents if separation is as a result of State action.
- The Prison Rules do not permit a male prisoner who has sole custody of a child/parental responsibility for a child at the time of sentencing to have that child live with them in prison if aged 9 months or younger.
- The Prison Rules do not permit a child aged 9 months or older to live with a parent in prison if this is in the child's best interests.
- Legislation does not provide for all children who have been separated from their parents through relinquishment or abandonment to access information about their parent(s).

²⁵⁸ Children and Young People's Plan 2019-23, *Putting Children First – The Plan for Jersey's children, young people and their families*:
<<https://www.gov.je/SiteCollectionDocuments/Caring%20and%20support/ID%20Children%20and%20Young%20People%20Plan%202019%20to%202023%20EW.pdf>>
accessed 10th August 2020.

²⁵⁹ Ibid, p.8.

²⁶⁰ Ibid, p.14.

Family Reunification (Article 10)

186. Under Article 10 a State is obliged to treat applications by a child or their parent(s) to enter or leave a State for the purpose of family reunification in a positive, humane and expeditious manner. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- A child with parents residing in different States should have the right to maintain personal relations and direct contacts on a regular basis with both parents.

187. The GACC suggest that family reunification should be considered taking account of the best interests of the child.²⁶¹

Family reunification in Jersey

188. Under the Immigration (Jersey) Order 1993, which extends certain provisions of the UK Immigration Act 1971 to Jersey (with some modifications), the Minister for Home Affairs may set out the practices to be followed to regulate when foreign nationals who do not have the right to live in Jersey may enter the island.²⁶² The Jersey Immigration Rules (JIR),²⁶³ made pursuant to the UK Immigration Act 1971, set out the requirements, conditions and other rules relating to the entry of foreign nationals. Different requirements apply, depending on whether the person seeking to enter is a British National, Commonwealth citizen with right of abode or EEA national (or family member of an EEA National). If none of these apply, leave to enter is required. Leave to enter may be time limited and may be made conditional.²⁶⁴

189. The JIR make provision for entry to Jersey in a variety of situations, for example as a 'general visitor', as a student, or the child of a student with permission to study in Jersey, as the child of a person with limited leave to remain in Jersey, or for

²⁶¹ In its Concluding Observations on the UK in 2016 (note 4), the Committee noted (in the context of Special Protection Measures) that unaccompanied and separated refugee children within and outside of the UK face restrictions on family reunification.

²⁶² As amended by Immigration (Jersey) Amendment) Order 2017.

²⁶³ See:

<<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/JSY%20Immigration%20Rules%20061219.pdf>> accessed 24th July 2020.

²⁶⁴ Rule 8

employment or business purposes.²⁶⁵ The JIR also provide for the parent(s) of a child with a contact order (granted by a Jersey Court) to exercise a right of access to a child resident in Jersey,²⁶⁶ subject to certain conditions, as well as indefinite leave to remain for these purposes, provided the applicant has no recourse to public funds,²⁶⁷ and has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the UK and Jersey.²⁶⁸

190. Under the JIR there is no right or recognition of the right of a child or a child's parent(s) to enter Jersey for the purposes of family reunification.

Findings: Article 10

191. We have found the following gaps in SoJ legislation:

- There is no SoJ legislation which provides for children to enter Jersey for the purposes of family reunification.
- The JIR provisions which enable adults to enter Jersey may restrict opportunities for family reunification.

Illicit Transfer and Non-return of Children (Article 11)

192. Article 11 requires States to take action to combat the illicit transfer of children abroad. The Committee is concerned that States take steps to prevent the removal and non-return of children abroad and encourages States Parties to conclude bilateral and multilateral agreements or accede to existing agreements to secure this.

Transfer and non-return of children

193. The Criminal Law (Child Abduction) (Jersey) Law 2005 makes child abduction a criminal offence and establishes a statutory mechanism which allows for applications for the recognition and enforcement in the UK of custody orders made in Jersey. The Child Abduction and Custody Act 1985 (Jersey) Order 2006 makes provision for the application of the Hague Convention on the Civil Aspects of Child Abduction and the

²⁶⁵ Rule 246.

²⁶⁶ Rule 248A.

²⁶⁷ Rule 248D(v).

²⁶⁸ Rule 248D(vii).

European Convention on Recognition and Enforcement of Decisions and on Restoration of Custody of Children to apply to SoJ.

Children Deprived of Family Environment (Article 20)

194. Article 20 requires a child deprived of their family environment to be given special protection, including through legislation. The Committee's General Comments and the GACC require that alternative care should be implemented in accordance with the law, and when placement is necessary, due regard should be paid to continuity in a child's upbringing, and to the child's ethnic, religious, cultural and linguistic background.

195. The GACC set out steps the State must take to meet their obligations to children in alternative care. Several of these are potentially to be addressed in legislation:

- Facilitation of contact, not just with family but with other people the child is close to, including friends, neighbours and previous carers and ensuring that children in alternative care because of parental imprisonment or prolonged hospitalization have the opportunity to maintain contact with their parents and receive any necessary counselling and support in that regard.
- Access for children in alternative care to a person of trust in whom they may confide in total confidentiality.
- Access to an effective complaints mechanism.
- Mechanisms to designate the legal right and responsibility to make decisions to an individual or competent entity, in consultation with the child.
- Stipulation that all agencies and facilities must be registered and authorized to operate by social welfare services or another competent authority, and that failure to comply with such legislation constitutes an offence punishable by law. Authorization should be granted and be regularly reviewed by the competent authorities on the basis of standard criteria.
- Ensure and maintain complete, accurate, up to date and confidential records which can be made available to the child, and to the child's parents, within the limits of the child's right to privacy and confidentiality.
- Laws and regulations to prohibit the recruitment and solicitation of children for placement in residential care by agencies, facilities or individuals.

- The need for special and appropriate measures to protect children in informal care from abuse, neglect and all forms of exploitation.
- The need for alternative care accommodation to reach health and safety standards, and, along with supervision, ensures that children can be protected from abuse.
- Ensuring that measures aimed at protecting children in alternative care do not unnecessarily restrict their liberty and are in accordance with the law.
- Introducing measures to ensure that children in alternative care are not stigmatised.
- Prohibiting disciplinary measures or behaviour management that amount to torture, cruel, inhuman or degrading treatment, including solitary confinement, physical or psychological violence, and take measures to ensure such practices are punishable by law.
- Making sure any use of force or restraint is in accordance with the law.

Protection of Children in Informal Care

196. SoJ introduced a policy framework for corporate parenting in 2018 in response to the Independent Jersey Care Inquiry 2017 and an Ofsted inspection in June 2018.²⁶⁹

The Corporate Parenting Policy Framework is aimed at developing and extending *‘...the range of preventative and early help services that are targeted to support children to safely stay with their families wherever possible; and increase the number of foster care placements that are on Island so that children those children who are unable to stay with their birth families are brought up in a family setting and retain their links with Jersey.’*²⁷⁰

197. It is not clear whether there is an established practice of ‘informal care’ in Jersey. The GoJ recognises the possibility of connected person/kinship care, noting that *‘We always ask family members or another person connected to the child to provide this care if possible.’*²⁷¹ These informal arrangements are not regulated through the Children Law unless social workers are involved in the placement of the child with relatives, in which case, the child will be looked after within the meaning of the Children

²⁶⁹ Note 257.

²⁷⁰ Ibid.

²⁷¹ Taken from GoJ information website:

<<https://www.gov.je/Caring/Children/FosteringAndAdoption/BecomeAFosterCarer/Pages/DifferentTypesOfFostering.aspx>> accessed 10th August 2020.

Law.²⁷² There are no specific safeguards in place to prevent abuse of children who are in informal care that do not fall within the definition of a 'looked after' child, however, the criminal law provides safeguards against criminal abuse or neglect.

Preventing injury and abuse

198. SoJ regulations establish health and safety standards for care homes.²⁷³ The Human Rights Law gives effect in SoJ domestic law to rights and freedoms guaranteed under the ECHR. This includes protection of life (Article 2), and prohibition of inhuman or degrading treatment (Article 3). SoJ criminal law protects against physical and sexual abuse. The Children Law makes it an offence to cause harm or neglect to a child under the age of 16.²⁷⁴

199. The Care Standards,²⁷⁵ are intended to provide children and young people in care homes clear expectations about how they should be treated, and to prevent injury and abuse. The Care Standards specify:

- A child/young person's liberty is restricted only if it is in accordance with Article 22 of the Children Law. The restrictions will be clearly set out in the aims and objectives of the placement.
- Physical restrictions on normal movement within the accommodation will only be used in relation to a child/young person where the restriction is specified in their personal plan and only used where necessary to safeguard and promote that child/young person's welfare.

Children in alternative care are not stigmatised

200. The Jersey Care Commission Standards, Standard 6 requires that there will be no external markings to premises indicating that it is residential care.²⁷⁶

²⁷² Article 1A and 20(1).

²⁷³ Regulation of Care (Standards and Requirements)(Jersey) Regulations 2018.

²⁷⁴ Article 35.

²⁷⁵ Note 243.

²⁷⁶ Ibid.

Prohibition of cruel etc disciplinary measures and behaviour management

201. The Human Rights Law, which gives effect to Article 3 ECHR, protects against inhuman or degrading treatment (Article 3). An amendment to the Children Law has removed a caveat that potentially exempted a parent, teacher, or someone else 'lawfully in charge of a child' from conviction for administering physical punishment to a child.²⁷⁷

202. For children in residential care, the Care Standards prohibit corporal punishment, deprivation of food or drink, restrictions on contact with friends, parents or other relatives (unless this has been identified as a means of protecting the young person), or restriction on visits from or contacts with professionals they are involved with (solicitor, social worker, guardian, independent person, inspector etc).²⁷⁸

Restraint/use of force in accordance with the law

203. Secondary legislation permits the use of control or restraint by a registered person in a residential home, subject to it being '*...lawful, not excessive and in the best interests of the care receiver*'.²⁷⁹ The Care Standards further elaborate that in residential homes, '*Restrictive physical interventions should not be used unless it has been specified within an individual child/young person's personal plan as directed by a health or social care professional and then, should only be used when a situation warrants immediate action*'.²⁸⁰

Child death inquiries

204. A Child Death Overview Panel²⁸¹ convenes once a year. This comprises the Guernsey and Alderney 'Islands Safeguarding Children Partnership' and the Jersey 'Safeguarding Children Partnership Board'. The panel meets bi-annually to consider child deaths (excluding still births and planned terminations). It has an advisory role and can make recommendations for action. Procedures are governed by a Memorandum of Understanding.

²⁷⁷ Deleting Article 35(5).

²⁷⁸ Note 243.

²⁷⁹ Regulation of Care (Standards and Restrictions)(Jersey) Regulations 2018, Regulation 16(1).

²⁸⁰ Note 243, Standard 8.6.

²⁸¹ See: <<https://safeguarding.je/child-death-overview-panel/>> accessed 10th August 2020.

Contact

205. Contact, including during imprisonment and whilst in the care of SoJ (care home settings) has been dealt with above.

Access to a person of trust, and to an effective complaints mechanism

206. The Children Law gives the Minister power to appoint a 'visitor' for the child, if it would be in the child's best interests.²⁸² Legislation gives the Minister the power to 'advise and befriend' a child in alternative care or accommodate.²⁸³

207. Regulations require an internal complaints mechanism to be in place in respect of care home settings,²⁸⁴ and require that the independent person appointed to visit and report on children's homes and care services provided to children must be able to interview children in private.²⁸⁵ In addition to legislation, the Care Standards require that children and young people in residential care will be :

- Encouraged and supported to provide feedback, *inter alia* through regular house meetings.
- Supported to speak up when things aren't right.
- Aware of a complaints procedure in child friendly format.²⁸⁶

208. The Care Standards state that an independent person will be involved from the onset of any complaint process, there will be a two stage complaints process, and a record of complaints will be kept and monitored on a monthly basis.²⁸⁷ There is an online facility to make a complaint about Children's Services.²⁸⁸ In addition to a complaints procedure for children and young people, the Care Standards require

²⁸² Schedule 2, paragraph 3.

²⁸³ Article 21.

²⁸⁴ The Regulation of Care (Standards and Requirement)(Jersey) Regulations 2018, Regulation 22.

²⁸⁵ Ibid, Regulation 31(2)(a).

²⁸⁶ Note 243, Standard 14.

²⁸⁷ Ibid, Standard 14.3.

²⁸⁸ See: <<https://www.gov.je/Health/SocialServices/Pages/ReportinGeneralCommentonConcernsAboutChildren.aspx>> accessed 10th August 2020.

residential care providers to have a whistleblowing policy in place for care/support workers.²⁸⁹

Decision making

209. The GACC envisage that there should be a mechanism in place to designate the legal right and responsibility to make decisions to an individual or competent entity to make such decisions, in consultation with the child.²⁹⁰ The Children Law provides for the appointment of a guardian in the situation where there is no one with parental responsibility for a child, or where a parent(s) or guardian who has a residence order in their favour, dies while the residence order is in place.²⁹¹

Registration and authorisation of agencies and facilities

210. The Regulation of Care (Jersey) Law 2014 (Regulation of Care Law) puts in place both a requirement to register and the procedure for registering to carry on or act as a manager of ‘regulated activities’,²⁹² It also sets out the conditions and requirements for registration.²⁹³ ‘Regulated activities’ are defined in Schedule 1 of the Regulation of Care Law and cover care home services, including children’s homes. The Regulation of Care Law also creates criminal offences relating to carrying on regulated activities without registration.²⁹⁴ Secondary legislation includes further details relating to the requirements for registration²⁹⁵ and other aspects of the provision of care including (but not limited to) health and safety,²⁹⁶ safeguarding,²⁹⁷ use of control and restraint,²⁹⁸ the suitability of workers,²⁹⁹ and the suitability of premises.³⁰⁰

211. Regulations also require a system of internal review,³⁰¹ with reports submitted to the Jersey Care Commission. In respect of children’s homes and care services

²⁸⁹ Note 243, Standard 14.4.

²⁹⁰ Note 194, para. 101.

²⁹¹ Article 7.

²⁹² Part 2.

²⁹³ Part 3.

²⁹⁴ Articles 3(4) and 3(5)

²⁹⁵ The Regulation of Care (Standards and Requirement) (Jersey) Regulations 2018.

²⁹⁶ Ibid, Regulation 10.

²⁹⁷ Ibid, Regulation 11.

²⁹⁸ Ibid, Regulation 16.

²⁹⁹ Ibid, Regulation 17.

³⁰⁰ Ibid, Regulation 18.

³⁰¹ Ibid, Regulation 19.

provided to a child not living with their parent(s), there must be an independent person appointed to visit and report on regulated activities.³⁰² The independent person must visit once a month,³⁰³ and can visit unannounced.³⁰⁴ In particular, the independent person's report should address whether children are effectively safeguarded and whether their well-being is promoted by the conduct of the home.³⁰⁵

Record Keeping

212. The GACC require complete, accurate, up to date and confidential record keeping³⁰⁶ which can be made available to the child, and to the child's parents, within the limits of the child's right to privacy and confidentiality.³⁰⁷ SoJ has in place a data protection regime which gives the individual rights in relation to data that is held about them, and places obligations on the person (including organisations) controlling and processing that information to maintain the confidentiality of data.³⁰⁸

213. Regulations³⁰⁹ and the Care Standards³¹⁰ deal with a child's personal plan and care records. Children have access to their care records and are entitled to confidentiality. The Care Standards provide that care records should only be shown to those with a legitimate need to know information, and children will be made aware of when information is shared and why.³¹¹

Prohibition of recruitment and solicitation

214. The GACC require laws, policies and regulations to prohibit the recruitment and solicitation of children for placement in residential care by agencies, facilities or individuals.³¹² We have been unable to establish whether SoJ legislation makes relevant provision.

³⁰² Ibid, Regulation 30.

³⁰³ Ibid, Regulation 31(1).

³⁰⁴ Ibid, Regulation 31(3).

³⁰⁵ Ibid, Regulation 31(4).

³⁰⁶ Note 194, paras 109 and 110.

³⁰⁷ Ibid, para 111.

³⁰⁸ Data Protection (Jersey) Law 2018; Data Protection Authority (Jersey) Law 2018.

³⁰⁹ The Regulation of Care (Standards and Requirement) (Jersey) Regulations 2018, Regulation 9.

³¹⁰ Note 243, Standard 4.

³¹¹ Ibid, Standard 4.6.

³¹² Note 194, para 127.

Findings: Article 20

215. Although not all aspects of Article 20 are covered by legislation, the Care Standards and SoJ legislation establish a comprehensive regime providing protection for children deprived their family environment. However, we have found the following gaps in SoJ legislation:

- Informal care which is not arranged by the SoJ is unregulated.
- We have been unable to establish whether SoJ legislation or policy prohibits the recruitment and solicitation of children for placement in residential care by agencies or individuals.

Adoption (Article 21)

216. The GACC state that where a child is separated or unaccompanied, adoption should be considered a last resort once efforts to locate the child's parents, extended family or habitual caregivers have been exhausted.³¹³

217. In its Concluding Observations on the UK 2002,³¹⁴ the Committee indicated:

- The need for Article 12 rights (the right to be heard, and to have those views taken into account) to be incorporated into adoption proceedings.
- That the UK should take all measures to allow adopted children to obtain information on the identity of their parents.

218. The Adoption (Jersey) Law 1961 (Adoption Law) states that the paramount consideration in any decision relating to the adoption of a child must be the welfare of the child throughout their life, however the Adoption Law does not prioritise the best interests of the child subject to adoption.³¹⁵

³¹³ Note 194, para 166.

³¹⁴ Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.188&Lang=en accessed 10th August 2020.

³¹⁵ Article 3(1). Article 3 of the Adoption (Jersey) Law 1961 was inserted by the Adoption (Amendment No.7) (Jersey) Law 2015. We have been informed (GoJ comments, 15th September 2020) that the Minister's Report to the proposition for the draft Law that the rationale for inserting Article 3 was to ensure the Adoption Law is consistent with the 'overarching principles' of the UNCRC and to seek consistency with welfare provisions in the Children Law. It seems that this led to welfare rather than best interests being inserted in the Adoption Law.

219. The Adoption Law requires that in reaching any decision about adoption, the wishes and feelings of the child must, so far as reasonably practicable, be ascertained, and must be given due consideration, having regard to the child's age and understanding,³¹⁶ and that once a child reaches 14 years of age, no decision about adoption can be made without the agreement of the child in writing (or if not in writing, then evidenced in writing).³¹⁷

Information on the identity of birth parents

220. The Adoption Law treats identifying information about an adopted person or any other person (which will include the biological/birth parents of the adopted child) as 'restricted information' which can only be disclosed in accordance with the provisions of the legislation.³¹⁸ The Adoption Law requires the maintenance of an Adopted Children Register.³¹⁹

221. Under the Adoption Law an adopted person who has reached the age of 18 may apply to obtain information that will allow him or her to obtain a copy of their birth certificate.³²⁰ An adopted person under the age of 18 who is intending to marry may be provided information about whether the child and the intended spouse are within the degrees of relationship prohibited for marriage.³²¹

Findings: Article 21

222. While SoJ legislation provides a comprehensive framework of regulation on adoption, we have found:

- The Adoption Law does not prioritise the best interests of the child subject to adoption.
- SoJ legislation fails to provide children with a right to access information about their birth parents.

³¹⁶ Article 3(2).

³¹⁷ Article 3A.

³¹⁸ Article 32A.

³¹⁹ Article 24.

³²⁰ Article 30(1).

³²¹ Article 30(2). We have been informed (GoJ comments, 15th September 2020) that legislation is being prepared to raise the marriage age to 18 years.

Periodic Review of Placements (Article 25)

223. The GACC require that States conduct regular and thorough review of the appropriateness of the care and treatment of any child in alternative care.³²² The Preliminary Report (Appendix 1) states that the Children Law, the Children (Secure Accommodation) (Jersey) Order 2005 and the Criminal Justice (Young Offenders) Law 1994 all include a facility for the review of placements.³²³

224. We have been unable to locate the relevant provision in the Children Law relating to review of Care Homes. However, we note that Independent Safeguarding and Standards (ISS) were published following the Williamson Review of Jersey's Child Protection policies to ensure that '*children who are looked after by the States have their needs met and ...regularly reviewed*'.³²⁴ The ISS state that the Minister's duty to investigate contained in the Children Law³²⁵ gives rise to the need to lay down an ongoing monitoring and review process.³²⁶ The ISS also looks to best practice in England and the procedures set out in UK legislation which establish a full time Independent Reviewing Officer whose role is informed by the contents of a non-statutory handbook published in 2013.³²⁷

³²² Note 194, para 67.

³²³ Chapter 5 section H Periodic Review of Placements.

³²⁴ Independent Safeguarding and Standards Service Specification States of Jersey Department for Health and Social Services:
<<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20ISS%20Service%20Specification%2020120813%20LD.pdf>> accessed 24th July 2020.

³²⁵ Ibid, Art 42.

³²⁶ Ibid, section 3 'Legal Context'. The Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018, Regulation 31 makes provision for independent persons visiting children's homes and, among other things, inspecting and reporting on the condition of the premises.

³²⁷ Independent Safeguarding and Standards IRO Handbook;
<<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20ISS%20IRO%20Handbook%2020120813%20LD.pdf>> accessed 24th July 2020.
The UK handbook sets out a schedule of reviews as: first within 28 days of the child first becoming 'looked after'; a second review no more than 4 months after the child first becomes looked after; with third and subsequent meetings taking place no more than 6 months after the previous meeting. There is also provision for a review whenever the Independent Reviewing Officer directs.

225. The Care Standards include a provision that *'How you are cared for and where you live or stay for will be checked and reviewed regularly to sort out any issues and make things better for you and other children and young people'*, and include a provision for monthly visits by an independent person and a requirement to involve children and young people living in the accommodation to improve the service.³²⁸

226. The Criminal Justice (Young Offenders)(Jersey) Law 2014 (Young Offenders Law) provides for review where a child is held in secure accommodation, on remand or following sentence, within 1 month of the inception of the 'placement', and then no less frequently than every 3 months thereafter by a 'Placement Panel'.³²⁹ The Young Offenders Law states that a review should consider whether the criteria for keeping the child in secure accommodation still apply, whether the placement continues to be necessary and whether any other description of accommodation would be appropriate for the child,³³⁰ and that the Placement Panel must consider the best interests of the child and other children who may be detained in the same place:³³¹ if practicable, the views of the child (as well as others, including anyone with parental responsibility for the child/young person) are to be taken into account as part of the review.³³²

227. The Children Law provides that a child may be placed in secure accommodation even if they are not on remand or following sentence if they are likely to abscond or have a history of absconding and are likely to suffer significant harm if they do abscond, or are likely to injure themselves or others in another form of accommodation.³³³ The Children (Secure Accommodation) (Jersey) Order 2005 requires the Minister to appoint 3 people to keep the child's accommodation in secure accommodation under review within a month, and then at intervals not exceeding 3 months.³³⁴

³²⁸ Note 243, Standard 15.

³²⁹ Article 18. See also: Children (Secure Accommodation) (Jersey) Order 2005 Article 10.

³³⁰ Article 19.

³³¹ Article 19.

³³² Article 19(c) and (d).

³³³ Article 22.

³³⁴ Article 9.

228. The above provisions do not apply to children detained under the Mental Health Law.³³⁵ It is not clear how a child detained under the Mental Health Law would benefit from *‘reviews every 3 months in the first year and every six months thereafter’* as asserted in the Preliminary Report (Appendix 1).³³⁶

229. While the Mental Health Law provides that a person detained under the Law may apply to a Review Panel to review their detention, and this includes a child (or a person on behalf of a child),³³⁷ we have been unable to identify provisions relating specifically to the review of the detention of a child under the Mental Health Law.

Findings: Article 25

230. While SoJ legislation provides a framework for review of the situation of children in the secure estate, and the Care Standards (established on the basis of underpinning legislation) provide a review framework for children in care homes, we have identified the following gaps in SoJ legislation:

- Legislation does not require that the views of the child are to be taken into account as part of any review of detention in secure accommodation (this is contingent on practical considerations).
- The Mental Health Law does not specify a discrete procedure for the review of the situation of any child detained under the Law.

Recovery of Maintenance (Article 27(4))

231. In the context of ensuring that every child has an adequate standard of living, under UNCRC Article 27(1), the Committee requires that States take all appropriate measures to ensure the recovery of maintenance for the child from those parents or people with financial responsibility for the child. This should apply equally to parents living in a different State to the child, through accession to, or conclusion of, international agreements and other appropriate arrangements.

³³⁵ Children (Secure Accommodation) (Jersey) Order 2005, Article 5.

³³⁶ Chapter 5 section H Periodic Review of Placements, para 2.

³³⁷ Article 50.

Child maintenance

232. Under the Children Law, a court has power to secure financial support for a child from a parent(s) or others with financial responsibility for the child.³³⁸ The Children Law authorises a court to make an order for the payment of maintenance against a parent living in Jersey, or where the child lives with the other parent outside Jersey.³³⁹ Jersey is a party to the UN Convention on the Recovery Abroad of Maintenance, and the Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

Collated Findings: Family Environment and Alternative Care

233. We have found the following gaps in SoJ legislation, or policy in areas where legislation might be anticipated, in the area Family Environment and Alternative Care:

Article 5 and 18(1) and (2)

- a) Gaps in SoJ legislation in relation to social security and housing under Disability, Basic Health and Welfare are relevant here.

Article 9

- b) Under the Children Law 'welfare' is used in preference to best interests in relation to some orders where a child may be separated from its parent(s).
- c) The requirement to take account of the ascertainable wishes and feelings of the child when action is taken under the Children Law does not apply to child assessment orders or emergency protection orders.
- d) The Children Law does not ensure that a child who is separated from their parent(s) is able to maintain contact with their family, friends and acquaintances.
- e) There is no legislative provision requiring a child to be informed of the whereabouts of their parents if separation is as a result of State action.
- f) The Prison Rules do not permit a male prisoner who has sole custody of a child/parental responsibility for a child at the time of sentencing to have that child live with them in prison if aged 9 months or younger.
- g) The Prison Rules do not permit a child aged 9 months or older to live with a parent in prison if this is in the child's best interests.

³³⁸ Schedule 1.

³³⁹ Schedule 1 Article 11. See also: Maintenance Orders (Facilities for Enforcement) (Jersey) Law 2000.

- h) Legislation does not provide for all children who have been separated from their parents through relinquishment or abandonment to access information about their parent(s).

Article 10

- i) There is no SoJ legislation which provides for children to enter Jersey for the purposes of family reunification.
- j) The JIR provisions which enable adults to enter Jersey may restrict opportunities for family reunification.

Article 20

- k) Informal care which is not arranged by the SoJ is unregulated.
- l) We have been unable to establish whether SoJ legislation or policy prohibits the recruitment and solicitation of children for placement in residential care by agencies or individuals.

Article 21

- m) The Adoption Law does not prioritise the best interests of the child subject to adoption.
- n) SoJ legislation fails to provide children with a right to access information about their birth parents.

Article 25

- o) Legislation does not require that the views of the child are to be taken into account as part of any review of detention in secure accommodation (this is contingent on practical considerations).
- p) The Mental Health Law does not specify a discrete procedure for the review of the situation of any child detained under the Law.

SPECIAL PROTECTION MEASURES

Areas Covered

234. This chapter covers topics dealt with under section 9 of the Reporting Guidelines,³⁴⁰ i.e. Special Protection Measures, and under chapter 8, Special Protection Measures, in the Preliminary Report (Appendix 1).

235. The Reporting Guidelines list UNCRC Articles 22, 30, 32, 33, 34-36, 37(b)-(d), 38-39 and 40³⁴¹ as most relevant to special protection measures.

236. The Reporting Guidelines list the most relevant UNCRC articles and General Comments³⁴² on special protection measures as:

- General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.
- General Comment No. 10 (2007) on children's rights in juvenile justice.
- General Comment No. 11 (2009) on indigenous children and their rights under the Convention.

237. The Reporting Guidelines establish a number of areas that are required to be addressed when reporting to the Committee on special protection measures. These are:

- Children outside their country of origin seeking refugee protection, unaccompanied asylum-seeking children, internally displaced children, migrant children and children affected by migration.
- Children belonging to a minority or an indigenous group.
- Children in street situations.
- Children in situations of exploitation.
- Children in conflict with the law, child victims and witnesses of crimes and juvenile justice.

³⁴⁰ Note 3,

³⁴¹ Note 1.

³⁴² Note 7.

- Children in armed conflicts, including physical and psychological recovery and social reintegration.

238. While not all the areas covered in the Reporting Guidelines require States to introduce legislative measures of implementation, it is anticipated that legislative measures, including framework legislation, will be amongst the measures introduced.

239. In this Chapter we have focused on issues directly relevant to SoJ. Some issues, e.g. children in street situations, children in situations of armed conflict are either not pertinent in the context of issues facing children in Jersey or are the direct responsibility of the UK Government. For these reasons we have not dealt with them in this report.

Children Outside their Country of Origin, Children Seeking Refugee Protection, Unaccompanied Asylum-seeking Children, Internally Displaced Children, Migrant Children and Children Affected by Migration((Article 22)

240. The Committee is keen to see evidence that children seeking refugee status, accompanied or unaccompanied or otherwise displaced, are able to access their rights in the same way as children born in within a State.

241. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- Whether displaced children can access guardianship systems or legal advice.
- The care and accommodation arrangements that are made for displaced children.
- Access of separated and unaccompanied children to education.
- The provision of an adequate standard of living for separated and unaccompanied children.
- Enjoyment of the highest attainable health and access to facilities to treat illness and provide rehabilitation.
- The prevention of exploitation of all types, and trafficking.
- Prevention of military recruitment and protection from the effects of war.
- Prevention of deprivation of liberty and the treatment they might receive in cases of detention.

- The existence (or otherwise) of procedures that ensure that unaccompanied and separated children are neither routinely denied entry to States or detained by border or immigration officials.
- How unaccompanied and separated children access asylum procedures and whether their asylum claims are handled in an age and gender-sensitive manner.
- The availability of family reunification for separated children who are recognized as refugees, unencumbered by restrictive conditions which, in reality, make it virtually impossible to achieve.
- Procedures in place for return of the child to country of origin.
- The temporary nature of any status granted to those aged under 18, and what happens once the child turns 18 years of age.
- Procedures for inter-country adoption.

242. The SoJ Preliminary Report (Appendix 1) states that any unaccompanied child or separated child would enter SoJ via the UK or other EU State, and therefore from a 'safe third country', as a result, arrangements are made to return any such child to that country as soon as possible. In any intervening period, the child would be safeguarded by Jersey Immigration Service adhering to UK Borders and Immigration guidance, and if necessary by placing the child in the care of Jersey Social Services, provisions being made for the child under the Children Law.

243. We have sought clarification of this position and have been advised as follows:³⁴³

- An unaccompanied asylum-seeking child (UASC) who meets the conditions for asylum would be granted refugee status and would initially be given leave to remain for 5 years.
- Any UASC who does not meet the conditions for asylum would be returned to the country they came from, provided there are adequate reception arrangements.
- If the child does not qualify for asylum but cannot be returned to the country they arrived from, they would be granted leave to remain for a period of up to 30 months, or until the child attains the age of 17.5. At this point they would have the option to apply for an extension to their leave to remain under another immigration category.
- There have been no incidents of UASC travelling to SoJ.³⁴⁴

³⁴³ Email from Sarah McDermott, Policy Principal, Office of the Children's Commissioner to Sally Sellwood, Research Assistant 21st July 2020, 13:45

³⁴⁴ Ibid.

244. In Concluding Observations on the UK in 2016 that it reviews the Immigration Act 2016 to ‘...ensure its compatibility with the Convention...’, noting in particular that ‘Children are returned to the country of origin or habitual residence without adequate safeguards.’³⁴⁵

Non-discrimination

245. Many of the Committee’s concerns in respect of UASC relate to the arrangements in place for all children: care and accommodation, access to education, provision of an adequate standard of living and access to the highest attainable standard of health. See earlier chapters for discussion of the extent to which the Human Rights Law and the Discrimination Law protect rights guaranteed by the Convention and give effect to the general principle of non-discrimination for all children in Jersey.

246. The omission of religion/belief as a protected characteristic in the Discrimination Law leaves a gap which could impact negatively on UASC or separated children in Jersey seeking access to goods and services.

Access to guardianship and legal advice

247. A guardian or adviser should be appointed as soon as an UASC or separated child is identified.³⁴⁶ If that child is involved in an asylum claim or administrative or judicial proceedings, they should also have access to legal representation.³⁴⁷

248. The JIR provide that once an UASC has made an application for asylum they should be provided with a representative to assist him or her and if necessary to represent them, but there is no provision for a guardian or legal adviser to be appointed before a claim is made.³⁴⁸

³⁴⁵ Note 4, paragraph 76(h) and 77(g).

³⁴⁶ General Comment No.6, note 7, para 33.

³⁴⁷ Ibid, para 21.

³⁴⁸ Note 263, para. 350 et seq.

249. Legal Aid in SoJ is largely funded by the legal profession and is administered by the Law Society of Jersey.³⁴⁹ Eligibility criteria for Legal Aid include ‘habitual residence’ in SoJ³⁵⁰ so it is not clear how SoJ would provide legal advice and support to an UASC arriving in Jersey.

250. A child only becomes eligible for a representative once an application for asylum has been made. However, an UASC might not be aware that they can make an application for asylum or understand that they are required to do so expeditiously, without first having the opportunity to talk to an advisor or representative. They might either fail to make an asylum claim, or make a late claim and risk having their credibility questioned for failing to ‘...*take advantage of a reasonable opportunity to make an asylum claim or human rights claim...*’.³⁵¹

251. In its 2016 Concluding Observations on the UK Government,³⁵² the Committee raised its concerns that UASC were not routinely provided with access to an independent guardian or legal advice during immigration and asylum procedures, and concluded that independent statutory guardians should be made available to all UASC.

Access to care and support, accommodation, education, adequate standard of living, and health and welfare

252. SoJ provisions relating to these rights are dealt with in general terms elsewhere in this report. While we have been informed that there are no UASC in Jersey, a number of provisions in SoJ legislation might provide a safety net for UASC or separated children. These include:

- The Children Law gives the Minister power to provide accommodation for a child in need.³⁵³

³⁴⁹ Note 125.

³⁵⁰ Legal Aid Guidelines 2005, amended 2010:

<<https://www.legalaid.je/pdfs/Legal%20Aid%20Guidelines%20final%20ver-020810.pdf>> accessed 24th July 2020.

³⁵¹ JIR, Note 263, Rule 339N(4).

³⁵² Note 7, para 77(b).

³⁵³ Article 17(1)(a).

- The Children Law enables the Minister to provide advice and assistance to children that appear to need advice or to be befriended.³⁵⁴
- The Education Law provides that every child of compulsory school age should receive an education appropriate to their age, ability, aptitude and any special educational needs they may have.³⁵⁵

253. While these provisions will help ensure an UASC receives help and support while in Jersey pending the outcome of any claim for asylum, there are some areas where provision would appear to disadvantage an UASC or separated child, or exclude them entirely from being able to access services.

254. Although the Education Law states that all children of compulsory school age should receive education, SoJ policy states that only British and EEA citizens, and third country nationals with the appropriate visa may access publicly funded primary and secondary education.³⁵⁶ This means that an UASC or separated child would not be able to access publicly funded education until the outcome of their application for asylum or a visa is known, contrary to the expectation that *‘Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered’*.³⁵⁷

255. Access to health care, income support and housing for UASC and separated children is not expressly provided for in SoJ legislation, or in policy. The requirements relating to residency negate the possibility of a successful claim under the existing income support system and there does not appear to be any alternative provision that would support UASC and separated children.

³⁵⁴ Article 21(1)(a).

³⁵⁵ Article 2 and 12(1).

³⁵⁶ See: Education, Leisure and Cultural Activities, Article 28.

³⁵⁷ General Comment 6, note 7, para 41.

Exploitation and Trafficking

256. The Committee notes that UASC and separated children, and in particular, girls, are more vulnerable to exploitation and trafficking, and therefore States are expected to take additional steps, including through legislation to shield them from these harms.³⁵⁸

257. SoJ criminal law protects children from trafficking and from exploitation,³⁵⁹ but does not distinguish more vulnerable groups of children, including UASC and separated children, or identify any particular measures to shield them from these harms, despite their increased vulnerability.

Military recruitment and the effects of war

258. The SoJ Preliminary Report (Appendix 1) states that Child and Adolescent Mental Health Service provision is available for children in Jersey, and that provision is made for the physical and psychological recovery of children who have suffered any form of abuse. However, it is not clear whether the barriers to access to health care discussed above and elsewhere in this report would prevent UASC and separated children who have been involved in conflict, either as child soldiers or as victims, from accessing those services.

Deprivation of liberty and treatment in detention

259. UASC and separated children should not be detained merely because they are unaccompanied or separated, or because of their migratory or residence status (or lack thereof).³⁶⁰ The Committee has raised concerns about the detention of UASC children for immigration purposes in its most recent Concluding Observations on the UK,³⁶¹ in which it advised the UK to cease the detention of asylum-seeking children. We have been informed that there have been no UASC in Jersey we are unable to comment on how they might be accommodated (see para.250 for relevant provision on accommodation).

³⁵⁸ General Comment 6 note 7, paras 50-52

³⁵⁹ See: Basic Health and Welfare.

³⁶⁰ General Comment 6, note 7, para 61.

³⁶¹ Note 4.

Asylum and Immigration Claims

260. We have been informed that any UASC or separated child arriving in Jersey would be entitled to have their claim for asylum considered by SoJ authorities.³⁶² The JIR recognises the vulnerability of children and state that a claim should not be refused because the child is too young to understand their situation or to have a well-founded fear of persecution, requiring more weight to be given to ‘objective indications of risk’ in the case of a child claiming asylum.³⁶³

261. The JIR state that children over the age of 12 should be interviewed by someone with specialist training in interviewing children, who should recognise that that child may be ‘inhibited or alarmed, and that the interviewer must pay attention to whether the child is becoming tired or distressed and whether the interview should be postponed to another day.’³⁶⁴ The decision on the asylum application must be taken by someone with experience of dealing with claims by children.³⁶⁵

Status granted to under 18s

262. The JIR require that ‘a person’ granted refugee status following a claim for asylum should be granted a Jersey Residence Permit, normally valid for 5 years unless there are ‘compelling reasons’ of national security, public order, or otherwise, why this should not be the case.³⁶⁶ It has been confirmed to us that a child granted refugee status would receive a Jersey Residence Permit,³⁶⁷ but this is not clear from the JIR. Once a refugee has held a residence permit for 5 years, they can apply for Indefinite Leave to Remain, subject to satisfying requirements linked to criminal behaviour or other behaviour which makes it undesirable to grant settlement.³⁶⁸ This risks penalising a child applying for Indefinite Leave to Remain for offences committed whilst a minor.

³⁶² Note 343.

³⁶³ Note 263, Rule 351.

³⁶⁴ Ibid, Rule 352.

³⁶⁵ Ibid.

³⁶⁶ Rule 339Q.

³⁶⁷ Note 343.

³⁶⁸ Rule 339R.

Temporary status

263. The JIR provide for a child to receive Limited Leave to Remain of 30 months, or until they reach the age of 17.5, in circumstances where the asylum claim or claim for humanitarian protection has not been granted and there are no appropriate reception arrangements in the country to which a child would be returned.³⁶⁹ It has been confirmed to us that at the point where the child reaches 17.5, they would be able to make a further application for leave to remain under another immigration category.³⁷⁰

Family reunification

264. See also: Family Environment and Alternative Care. The JIR as currently drafted make no provision for the parent(s) or sibling(s) (or wider family) of a child granted refugee status to apply for and be granted leave to enter or remain in Jersey for the purposes of family reunification.

265. The JIR permit a child to apply for leave to enter and/or remain in Jersey to be with a parent(s) who has been granted refugee status or humanitarian protection.³⁷¹ The JIR do not permit a child to apply to be reunited with other family members.

Return to Country of Origin

266. A child seeking asylum should only be returned to their country of origin where it is in the child's best interests to do so.³⁷² The Committee raised concerns in its 2016 Concluding Observations on the UK that children should be returned to their country of origin (or country of habitual residence) only where there are adequate safeguards, *'including a formal best-interests determination, effective family tracing, including individual risk and security assessments, and appropriate reception and care arrangements.'*³⁷³

³⁶⁹ Note 263, Rule 352ZE

³⁷⁰ Note 343.

³⁷¹ Note 263, Rules 352D & E (parent(s) with refugee status); Rules 352FG & FH (parent(s) with humanitarian protection).

³⁷² General Comment 6, note 7, paras 84 – 88.

³⁷³ Note 4, para. 77(h).

267. The JIR contemplate refusal of a claim for asylum if it would be possible for the claimant to return to part of their country of origin and remain there.³⁷⁴ The JIR make no mention of UASC or separated children and whether return would be in the child's best interests.

Inter-country adoption

268. See also: Family Environment and Alternative Care. SoJ is not party to the Hague Convention on the Protection of Children and Co-Operation in Respect of Inter-Country Adoption (Hague Convention). Provisions relating to adoption in Jersey are governed by the Adoption Law.³⁷⁵ Under the Adoption Law the Minister has power to give effect to the Convention.³⁷⁶

269. The Adoption Law requires the welfare of the child to be the paramount consideration and that children aged 14 or over should agree with the adoption, but it is not a requirement that children younger than 14 should have their views heard and taken into account.

270. Under the Adoption Law it is a criminal offence to offer payment for adoption, or in respect of the consents required for adoption.³⁷⁷ The legislation also requires that overseas adoptions must be registered, and a Court has power declare an overseas adoption invalid on public policy grounds.³⁷⁸

271. As the Hague Convention has not been given effect in Jersey, it is unclear the extent to which the Adoption Law applies to inter-country adoption. The legislation does include a number of safeguards against inappropriate adoption of UASC or separated children. However, the Adoption Law does not require that adoption should be 'in the best interests' of the child, nor does it provide for particular procedures to apply to inter-country adoption. The Adoption Law does not require that priority should be given to

³⁷⁴ Note 263, Rule 339O.

³⁷⁵ See

also: <<https://www.gov.je/Caring/Children/FosteringAndAdoption/ThinkingOfAdoption/Pages/AdoptingAChildFromOverseas.aspx>> accessed 24th July 2020.

³⁷⁶ Article 11A.

³⁷⁷ Article 39.

³⁷⁸ Article 39B.

adoption by relatives, and if not, then adoption within the community or the culture of the child.

Findings: Article 22

272. See also: findings under Family Environment and Alternative Care, Article 10 (family reunification) and Article 21 (adoption). We have found the following gaps in SoJ legislation on children outside their country of origin etc.:

- There is no statutory (or other) provision for a legal adviser to be available before an UASC makes a claim for asylum.
- There is no legislation which would guarantee legal aid for an UASC or separated child.
- The Children Law does not make specific provision in relation to accommodation that may be provided by the Minister for UASC or separated children.
- An UASC or separated child is not guaranteed access publicly funded education until the outcome of their application for asylum is known.
- There is no statutory guarantee that an UASC or separated child will not be detained in secure accommodation or youth detention for immigration purposes.
- There are no specific measures which would ensure UASC and separated children receive their rights to health care, the benefits of social security, and to housing.
- SoJ criminal law does not include particular offences to protect UASC or separated asylum seeking children from criminal harms.
- The Hague Convention has not been given effect in Jersey.

273. We have also found that the JIR fail to make provision in areas where it might be anticipated there would be legislation to ensure the rights of USAC or separated children:

- The JIR do not make clear when an UASC or separated child seeking asylum will receive a Jersey Residence Permit.
- The JIR may result in the denial of Indefinite Leave to Remain based on criminal behaviour or other behaviour for offences committed whilst a minor.
- The JIR make no provision for family reunification where a child is granted refugee status.

- The JIR make no provision for a child to apply for leave to enter and/or remain in Jersey to be with family members other than parents.
- The JIR do not require the best interest of the child to be taken into account when decisions are made about return of an UASC or separated child to their country of origin or other intermediary country.

Children Belonging to a Minority or an Indigenous Group (Article 30)

274. The Committee is concerned that indigenous children, and those belonging to ethnic, linguistic or religious minorities need special protection in order to enjoy their rights. General Comment No.11 deals with the situation of indigenous children, and children belonging to minority groups.³⁷⁹ The existence of an indigenous group is to be determined by 'self-identification' rather than official recognition by a State. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- Compulsory birth registration for all children.
- The ability for indigenous people to be able to provide culturally appropriate names for their children.
- Measures to prevent, or provide redress for any illegal deprivation of identity (or any element of identity).
- Consideration of the 'best interests' of the child in considering placements of alternative care includes the desirability of continuity in the child's upbringing and the child's ethnic, religious, cultural and linguistic background.
- The right of the indigenous child to use his/her own language.
- Protection from economic and sexual exploitation.
- Use of arrest detention and imprisonment as a last resort.
- The encouragement of traditional restorative justice systems.

Birth Registration and rules around naming of children

275. As discussed elsewhere in this report, SoJ has a comprehensive, compulsory system of birth registration. There is no provision in the Marriage Law for a fee to be charged for birth registration, however SoJ charges for the supply of both long form and

³⁷⁹ General Comment, No.11, Note 7, para 15.

short form birth certificates.³⁸⁰ We have been advised that there is no charge for registering a birth, which includes receipt of the long birth certificate, unless the birth is registered more than 21 day post birth, without a reasonable excuse.³⁸¹

276. There are no restrictions on names that may be given to children. Guidance given to registrars cautions against registering names made up of a sequence of letters or which might cause offence.³⁸²

Illegal deprivation of identity

277. Illegal deprivation of identity is not dealt with in SoJ legislation, However, as SoJ legislation provides for a comprehensive system of birth and identity registration, illegal deprivation of identity does not appear to be an issue requiring specific attention in legislation (see paragraph 87).

Best interests to include consideration of a child's cultural, linguistic and religious identity

278. As noted elsewhere in this report, SoJ legislation shows a preference for a welfare test rather than 'best interests'. When applying the welfare test under the Children Law there is nothing in the legislation which requires a relevant authority to take account of a child's linguistic, cultural or ethnic background.

Use of own language

279. English and French are official languages of SoJ. In 2019, it was agreed that Jèrriais, the traditional language of the Bailiwick of Jersey would be adopted as an official language of SoJ.³⁸³ There is no SoJ legislation to protect the Jèrriais language.

³⁸⁰ Article 60,

³⁸¹ Note 343.

³⁸² See: <https://www.whatdotheyknow.com/request/restrictions_on_childrens_names> accessed 24th July 2020.

Article 59A of the Marriage and Civil Status (Jersey) Law does impose some restrictions on the surname of a child, especially Article 59A(4) in the case of the surname to be given to a child when parents cannot agree the surname of the child.

³⁸³ See: <<https://statesassembly.gov.je/news/pages/States-agree-to-promote-J%C3%A8rriais.aspx>> accessed 24th July 2020.

280. There is no SoJ legislation permitting a child from a household where Jèrriais is the first language to be educated in that language. The Preliminary Report (Appendix 1) refers to state funded initiatives to promote not only Jèrriais but other minority languages in schools.

Protection from exploitation

281. Protection from exploitation are dealt with elsewhere in this report under Disability, Basic Health and Welfare, and Education, Leisure and Cultural Activities.

Use of traditional restorative justice practices

282. SoJ has a well-established restorative justice system referred to as the Parish Hall Enquiries. This is referred to below in more detail.

Findings: Article 30

283. We have found the following gaps in SoJ legislation:

- A child's linguistic, cultural or ethnic background are not expressly required to be taken into account when applying the welfare test under the Children Law.
- SoJ does not protect or promote the Jèrriais language as an indigenous language.

Children in Situations of Exploitation etc (Article 32-36)

284. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- Economic exploitation, including child labour, with specific reference to applicable minimum ages
- Use of children in the illicit production and trafficking of narcotic drugs and psychotropic substances.
- Sexual exploitation and sexual abuse.
- Sale, trafficking and abduction.
- Other forms of exploitation.

Economic exploitation

285. SoJ has a number of legislative provisions in place to protect children from economic exploitation and child labour. These are covered in Disability, Basic Health and Welfare, and Education, Leisure and Cultural Activities.

Use of children in production and trafficking of narcotic drugs and psychotropic substances

286. Measures to protect children from the harms related to drug and alcohol abuse are discussed in the chapter on Disability, Basic Health and Welfare.

287. In respect of the use of children in the production and trafficking of narcotic drugs and psychotropic substances, SoJ legislation creating drug offences does not specifically mention children or criminalise adults who might involve or seek to involve children in the production or trafficking of illegal drugs and psychotropic substances.³⁸⁴

Sexual exploitation and abuse

288. SoJ has legislation in place to protect children from sexual exploitation and abuse, see Disability, Basic Health and Welfare. The Sexual Offences Law creates specific offences relating to ‘young children’ (aged 12 or younger)³⁸⁵ and to children aged 13-15,³⁸⁶ as well as offences against children aged 15 or under³⁸⁷ and which include grooming, paying for the sexual services of a child and involving a child in prostitution or pornography.

289. The Sexual Offences Law includes ‘breach of trust’ offences in relation to those aged 16 and 17 years old,³⁸⁸ and it is an offence to pay for prostitution services from an exploited person.³⁸⁹

290. Legislation also provides specific protection to children (under the age of 18) from exploitation in the form of taking or making indecent images or pseudo images.³⁹⁰

³⁸⁴ Misuse of Drugs (Jersey) Law 1978.

³⁸⁵ Part 3.

³⁸⁶ Part 4.

³⁸⁷ Part 5.

³⁸⁸ Part 6.

³⁸⁹ Article 22.

³⁹⁰ See, for example: The Protection of Children (Jersey) Law 1994 Article 2.

Sale, trafficking and abduction

291. While the SoJ recognises the problem of modern day slavery,³⁹¹ there is no SoJ legislation similar to the Modern Slavery Act 2015 enacted by the UK Parliament.

Findings: Articles 32-36

292. In addition to gaps in protection against exploitation identified elsewhere in this report, we have found the following gaps in SoJ legalisation:

- Legislation creating drug offences does not specifically criminalise adults who might involve or seek to involve children in the production or trafficking of illegal drugs and psychotropic substances.
- There is no SoJ legislation expressly protecting children against modern day slavery.

Deprivation of Liberty (Article 37(b)–(d))

293. Article 37(b) (c) and (d) UNCRC set out principles relating to the deprivation of liberty of a child. Issues of particular concern to the Committee are:

- Deprivation of liberty should not be unlawful or arbitrary.
- Children deprived of their liberty should be treated with humanity and respect, and in a manner which takes account of the child's age and needs.
- Children deprived of their liberty should be separated from adults unless it is in the child's best interests.
- Children should be able to maintain contact with their family.
- Children deprived of their liberty should have access to legal and other assistance.
- Children should be able to challenge the legality of the deprivation of their liberty before a court or other independent, impartial authority and to receive a prompt decision.

³⁹¹ See, for example: <<https://jersey.police.uk/be-safe/modern-slavery-human-trafficking/>> and <<https://jerseyeveningpost.com/news/2019/10/02/human-trafficking-and-modern-slavery-inquiry/>> accessed 24th July 2020. The Modern Slavery Act 2015 includes a provision (section 60(6)) whereby Her Majesty may by Order in Council provide for any of the provisions of the Act to extend to the Channel Islands. The Act has not been extended.

No unlawful or arbitrary deprivation of liberty

294. See below for circumstances under which a child may be deprived of their liberty on arrest and detention for criminal offences. The Human Rights Law incorporates Article 5 of the ECHR into SoJ legislation, which protects against unlawful deprivation of liberty.

295. The Children Law makes provision for the placement of a child who is looked after by the Minister in secure accommodation where a child has a history of absconding and is likely to suffer significant harm if they abscond,³⁹² or where a child is likely to harm themselves or others in any other form of accommodation.³⁹³ A court will be required to authorise such detention, and should only do so after taking into the welfare of the child as a paramount consideration.³⁹⁴ Decisions under the Children Law may be appealed to a court.³⁹⁵ The Children Law does not require best interests to be taken into account as a primary consideration where a child should be deprived of their liberty under the legislation.

296. The Mental Health Law provides that any person, including a child, may be deprived of their liberty for reasons relating to their mental health.³⁹⁶ While the Mental Health Law requires 'authorised officers' to act with the best interests of the patient in mind,³⁹⁷ it does not require best interests to be taken into account as a primary consideration where a child is deprived of their liberty under the legislation. The Mental Health Law includes a procedure for challenge and review by a tribunal of any decision made under the Law, including on detention, and for appeals to court on a point of law.³⁹⁸

Treatment when deprived of liberty

297. The Preliminary Report (Appendix 1) suggests that detention of children ('invariably females'³⁹⁹) with adults in some circumstances is preferable to avoid social

³⁹² Article 22(a).

³⁹³ Article 22(b).

³⁹⁴ Article 2(1).

³⁹⁵ Article 68.

³⁹⁶ See, for example, Article 15, Emergency Admissions.

³⁹⁷ Article 6.

³⁹⁸ Article 50 and 52. Discrete from procedures for general and ongoing review.

³⁹⁹ Chapter 8, section F para 6.

isolation or transfer of the child 'off-island'. The Preliminary Report makes the same observations in relation to children deprived of their liberty on grounds of mental health.⁴⁰⁰

298. The Care Standards apply to residential care homes, including secure accommodation.⁴⁰¹ Although the treatment of detained patients is covered in the Mental Health Law, there do not appear to be any express standards in place concerning the treatment of children deprived of their liberty for mental health reasons.

Contact with family

299. The Mental Health Law refers to situations in which contact with a detained person may be restricted.⁴⁰² Neither the Mental Health Law nor the Children Law relating to secure accommodation,⁴⁰³ include express requirements to ensure that those detained are able to maintain contact with family, although in the case of the Children Law, such an order may be made ancillary to other orders.⁴⁰⁴

Access to legal and other assistance

300. Access to Legal Aid is dealt with elsewhere in this report. Children facing deprivation of their liberty for mental health reasons do not have a right to legal representation under the Mental Health Law. The legislation provides for the appointment of a 'nearest person' from a prescribed list to represent the detained child.⁴⁰⁵ The Minister, but not a child, may nominate a preferred 'nearest person'.⁴⁰⁶

Findings: Article 37(b)-(d)

301. SoJ legislation provides for deprivation of liberty to be in accordance with the law. However, we have found a number of gaps in SoJ legislation:

- The Children Law does not require best interests to be taken into account as a primary consideration where a child is deprived of their liberty under the legislation.

⁴⁰⁰ Chapter 8, section F para 8

⁴⁰¹ Note 243, Standard 3.5

⁴⁰² Article 82.

⁴⁰³ Article 22.

⁴⁰⁴ See for example, Article 27.

⁴⁰⁵ Article 8(3).

⁴⁰⁶ Article 10(2).

- The Mental Health Law does not require best interests to be taken into account as a primary consideration where a child should be deprived of their liberty under the legislation.
- The Mental Health Law does not include provision to ensure a child detained under the Law can maintain contact with their family.
- The Mental Health Law does not permit a child to nominate a preferred 'nearest person'.
- Although the treatment of detained patients is covered in the Mental Health Law, there do not appear to be any express and specific standards in place concerning the treatment of children deprived of their liberty for mental health reasons.

302. Contrary to the Convention and the Committee's recommendations, we have also found that children may be detained alongside adults in the secure estate or when detained under the Mental health Law.

Children in Conflict with the Law, Child Victims and Witnesses of Crimes and Juvenile Justice (Article 40)

303. The Committee recognises different groups of children that require special protection as a result of their interaction with the law and juvenile justice, whether as a child in conflict with the law, a child victim of crime, or children who witnesses a crime. Based on our review of the Committee's General Comments listed above we have identified issues of particular concern to the Committee as:

- The administration of juvenile justice, the existence of specialized and separate courts and the applicable minimum age of criminal responsibility.
- Children deprived of their liberty and measures to ensure that any arrest, detention or imprisonment of a child shall be used as a measure of last resort and for the shortest amount of time and that legal and other assistance is promptly provided.
- The sentencing of children, in particular the prohibition of capital punishment and life imprisonment and the existence of alternative sanctions based on a restorative approach.
- There should be opportunities for physical and psychological recovery and social reintegration of child victims of crime, or child offenders.
- All children in conflict with the law should be treated equally and should not suffer discrimination, for example in trying to access education or the labour market.

- 'Status offences' which arise as the result of psychological or socio-economic problems affecting children should be abolished.
- The best interests of the child should be at the heart of the juvenile justice system.
- The child should have the opportunity to be heard in juvenile justice proceedings.
- There should be opportunities for a child to be dealt with without resorting to judicial proceedings. Legislation should specify when this is possible and include provision for the regulation of the decision-making powers of police, prosecutors and other agencies. Diversion should not result in a criminal record for the child, and there should be regulations relating to the recording/keeping of such information for a limited time only.
- 12 years of old should be the absolute minimum acceptable age of criminal responsibility. The Committee encourages States Parties to consider a higher age, of 14 or even 16.
- Every child who is under the age of 18 at the commission of the alleged offence should be treated in accordance with the rules of juvenile justice. The Committee highlights the importance of a provable date of birth to ensure that children are treated as such.
- Juvenile justice should not be retroactive, particularly in the context of actions many States have taken to strengthen laws to prevent and protect against terrorism.
- Penalties should be those in place at the time of the offence (not at the time of conviction, unless a lighter penalty is in force at the time of conviction than at the time of offence).
- There should be a presumption of innocence.
- The child should be informed promptly and directly about the charges against him/her.

Equal treatment

304. As previously mentioned, the Human Rights Law incorporates the ECHR into SoJ law. This introduces a number of important concepts which are relevant in the context of youth justice into SoJ law, including the prohibition of inhuman and degrading treatment,⁴⁰⁷ the right to liberty and security,⁴⁰⁸ the right to a fair trial (which includes the presumption of innocence, and being informed of charges),⁴⁰⁹ no punishment without law.⁴¹⁰ According to the Human Rights Law, it is unlawful for public authorities, including

⁴⁰⁷ ECHR Article 3.

⁴⁰⁸ ECHR Article 5.

⁴⁰⁹ ECHR Article 6.

⁴¹⁰ ECHR Article 7.

the police, courts and tribunals in Jersey, to act in a way that is incompatible with ECHR rights.⁴¹¹

Status offences

305. We have been unable to identify any examples of ‘status offences’ whereby a child would be criminalised for behaviour which results from psychological or socio-economic problems, or where a child would be penalised but an adult would not.

Best interests of the child

306. Under the Young Offenders Law the Placement Panel, which is charged with determining the appropriate placement for a child sentenced to youth detention, must take into account both the best interests of the child to be detained, and the best interests of any other child/young person also detained there.⁴¹² However, there is no overriding statement of principle relating to the best interests of the child in the Young Offenders Law.

Deprivation of liberty as a last resort

307. The Young Offenders Law includes provisions relating to the sentencing and youth detention of young offenders. This legislation applies to children and young people under the age of 21. It provides that no one under the age of 21 should be sentenced to imprisonment, and that sentences of youth detention should not be passed unless either the offence committed is one where the tariff for someone aged 21 or older would be fixed at life imprisonment or imprisonment of 14 years or more (but not fixed), or there is no other appropriate method of dealing with the child/young person.⁴¹³ The Youth Justice Review suggests that in general, custodial sentences are used as a ‘measure of last resort’, although it notes that due to the constraints of suitable accommodation in the community, young people do remain at risk of a

⁴¹¹ Article 7.

⁴¹² Article 19. We have been informed (GoJ comments, 15th September 2020), that the Council of Ministers have accepted the recommendations of the Youth Justice Review 2018 that ‘In line with Article 3 of the UNCRC 1989, which states that ‘the best interests of the child shall be a primary consideration’, the Criminal Justice (Young Offenders) (Jersey) Law 2014 should be amended to include an explicit reference to this welfare principle’, and that work has commenced to implement this recommendation.

⁴¹³ Articles 4 and 5.

custodial sentence.⁴¹⁴ While the Young Offenders Law imposes conditions before a child may be sentenced to detention, it does not expressly require detention to be used as a measure of last resort.

308. The UK has been criticised by the Committee for maintaining the mandatory life sentence '*detention at her Majesty's pleasure*' for the offence of murder committed by a child.⁴¹⁵ The Young Offenders Law includes a provision that where a child or young person (aged 15-17) has committed an offence which would result in a mandatory life sentence, the child or young person shall be detained '*during Her Majesty's pleasure*' if they were a child/young person when the offence was committed.⁴¹⁶ The criticism which the Committee has made of the position in the UK also applies to Jersey.

Detention alongside adults

309. The Preliminary Report (Appendix 1) discusses a number of circumstances where children (female and male) may be detained alongside adult prisoners.⁴¹⁷ The UK has been criticised for not ensuring that child detainees are kept separate from adult detainees at all times.⁴¹⁸

Opportunities for the child to be heard and effective participation

310. The Young Offenders Law does not include any provision that would require the child to be heard from directly in criminal proceedings, or during a Placement Panel.⁴¹⁹

Diversion from judicial proceedings

311. The Jersey Youth Justice Review praises elements of youth justice in Jersey as child-focussed, including the commitment to 'horizontal' sentencing for repeat offenders, and the use of the Parish Hall Enquiry (PHE) system⁴²⁰ as a diversionary approach to deal with the majority of youth offending.⁴²¹

⁴¹⁴ Note 180, para 3.3

⁴¹⁵ Concluding Observations 2016, note 4, para 79(c).

⁴¹⁶ Article 5.

⁴¹⁷ Chapter 8, section F.

⁴¹⁸ Concluding Observations 2016, note 4, paras 78(e) and 79(e).

⁴¹⁹ Article 19(c).

⁴²⁰ See:

<<https://www.gov.je/CrimeJustice/ParishPolicing/Pages/ParishHallEnquiries.aspx>>
accessed 24th July 2020.

⁴²¹ Note 180, para 3.2.

312. Attendance at a PHE is voluntary, and the system relies on discussion in which the child's voice is heard, as well as that of the parent(s). The Jersey Youth Justice Review recognised the PHE as a system that works well for young people and diverts them away from prosecution and the effects of criminalisation.⁴²²

313. Sanctions imposed as the result of a PHE are not regarded as criminal convictions and do not have to be disclosed on job applications etc. They are not referred to in the Rehabilitation of Offenders (Jersey) Law 2001.

Minimum age of criminal responsibility

314. The minimum age of criminal responsibility as established by the Young Offenders Law is 10 years of age.⁴²³ The Committee has criticised the UK Government for its failure to raise the age of criminal responsibility from 10 years of age.⁴²⁴

All under 18s to be dealt with under the juvenile justice system

315. The Young Offenders Law provides that the Youth Court has jurisdiction to hear charges against a child or young person even if they attain the age of 18 before criminal proceedings are completed.⁴²⁵ However, there are certain circumstances where the Young Offenders Law provides that charges against a child may be heard by the Magistrates Court, including where the child/young person is charged jointly someone who is 18 or older;⁴²⁶ where someone aged 18 or older is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence;⁴²⁷ or where the Magistrates begin hearing a case and it becomes apparent that the Youth Court would have jurisdiction, the Magistrates may continue with the case.⁴²⁸ In any of these cases, the Magistrates may remand the child/young person to the Youth Court for sentencing.⁴²⁹ In certain circumstances, the Youth Court must commit a child or young

⁴²² Ibid, para 2.4.

⁴²³ Criminal Justice (Young Offenders)(Jersey) Law 2014 Article 2.

⁴²⁴ Concluding Observations, 2016, note 4, para. 79(a). It is understood that a review of the age of criminal responsibility in SoJ is due to take place in 2021. Note 180, para. 2.5.

⁴²⁵ Article 26.

⁴²⁶ Article 26(1)(a).

⁴²⁷ Article 26(1)(b).

⁴²⁸ Article 26(1)(c).

⁴²⁹ Article 26(2).

person to the Royal Court if the offence concerned is too serious for the Youth Court to deal with.⁴³⁰ The Committee has recommended that the UK ensure that all children under 18 are dealt within the juvenile justice system.⁴³¹

No retroactive punishment

316. The Preliminary Report (Appendix 1) asserts that no person can be prosecuted for acts that were not illegal at the time of their commission. This is given effect in SoJ law through Human Rights Law and incorporation of the ECHR, Article 7 (no punishment without law). The Committee is also concerned that any sentence given should be the sentence in place at the time the offence was committed, unless the sentence available at the time of sentencing is lighter than that available at the time the offence was committed, in which case the lighter sentence should be imposed.⁴³² Article 7 ECHR requires that ‘*no heavier penalty*’ than the one available at the time the offence was committed should be imposed by a court, but it does not go so far as to ensure that a lighter sentence is handed down if this available at the time when the sentence is passed.

Presumption of innocence

317. The incorporation of the ECHR into SoJ legislation through the Human Rights Law ensures the presumption of innocence (Article 6, the right to a fair trial, and in particular Article 6(2) which sets out the presumption of innocence). The Criminal Procedure (Jersey) Law 2018 expressly recognises the Article 6 rights of defendants in criminal proceedings in Jersey.⁴³³

Provision of Information

318. Children should be told what the charges against them are as soon as possible and they should also be advised as soon as possible if diversion from the youth justice system is appropriate. SoJ criminal procedures regulations permit a written notice showing the particulars of the offence (or offences) for which a young person is charged

⁴³⁰ Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949 Article 3(2), and Criminal Justice (Young Offenders)(Jersey) Law Article 26(3).

⁴³¹ Concluding Observations 2016, note 4, para 79(b).

⁴³² General Comment No 10, para 41.

⁴³³ Article 3(c).

to be given to the appropriate adult.⁴³⁴ While the Preliminary Report (Appendix 1) asserts that charges are read to children and their parents/legal guardians in accordance with the provisions made in law,⁴³⁵ we have been unable to establish those provisions and to establish where the responsibility lies for explaining charges to young people.

Legal Assistance

319. The Committee is concerned that a child in conflict with the law should have legal advice and assistance, not least to prepare his or her defence, and to protect him or her against self-incrimination.⁴³⁶

320. As noted previously in this report, State funded Legal Aid is not available in Jersey. This is 'mostly funded' by the legal profession and administered by the Law Society of Jersey. In many cases, legal aid amounts to a contribution to legal fees, rather than covering all costs, and recipients of legal aid may still have to make some payment towards their representation.⁴³⁷

321. Legal Aid Guidelines state that legal aid is not be available as a matter of course before a person, which includes a child, is charged with a criminal matter⁴³⁸ (for example following arrest), unless the applicant subject to interview is regarded as 'particularly vulnerable'. Vulnerability is not defined, and does not therefore automatically apply to children This is contrary to the Committee's requirements to avoid self-incrimination.⁴³⁹

322. Eligibility of legal aid for a child is based on the financial circumstances of their parent(s),⁴⁴⁰ unless they are financially independent and do not live with their parent(s).⁴⁴¹ Children in care are not charged and will be issued legal aid in their own

⁴³⁴ Police Procedures and Criminal Evidence (Codes of Practice) Jersey) Order 2004 Code C para 17.3

⁴³⁵ Chapter 8 H para 4.

⁴³⁶ General Comment No.10, note 7, paras 49 and 58.

⁴³⁷ Note 125.

⁴³⁸ Ibid, paras 1.4.1.1 and 2.7.

⁴³⁹ General Comment No 10, paras 56-58.

⁴⁴⁰ Note 125, para 2.3.6.

⁴⁴¹ Ibid, para 2.7(a).

right.⁴⁴² A child already in custody will be assessed in their own right for legal aid, although if subsequently released to live with their parent(s), it may be decided that the parent(s) should contribute, and the legal aid certificate may be revoked.⁴⁴³

323. Under the Legal Aid Guidelines there is an overriding discretion where minors are concerned for legal aid to be issued directly to the minor, and either not charged at all, or charged in relation to their finances and not their parents.⁴⁴⁴

Time Limits

324. The Committee is keen to see time limits put in place to govern the length of time between the commission of an offence by a child, the conclusion of the police investigation and a decision to charge, and the final adjudication and decision.⁴⁴⁵

325. It is one of the aims of the SoJ Youth Court to deliver swift administration of justice so that criminal matters can be resolved without delay.⁴⁴⁶ However, the Committee points out there should be time limits to ensure matters are dealt with '*promptly*', a more robust requirement than '*without delay*'.⁴⁴⁷

326. The Young Offenders Law deals with the constitution and procedure of the Youth Court but does not make any provision for specific time limits. The Criminal Procedure (Jersey) Law 2018 which deals with criminal proceedings generally (including the Youth Court) but does not include specific time limits, although language such as dealing with cases '*efficiently and expeditiously*' are used as part of the overriding objective to deal with cases justly,⁴⁴⁸ and requiring the court to '*actively manage*'⁴⁴⁹ cases, including '*discouraging delay*'.⁴⁵⁰ However there is no fixed time table for dealing with matters of Youth Justice.

⁴⁴² Ibid, para 2.7(c).

⁴⁴³ Ibid, para 2.7(d).

⁴⁴⁴ Ibid, para 2.7.

⁴⁴⁵ General Comment No.10, note 7, para 52.

⁴⁴⁶ See:

<<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/IJ%20YouthCourtBooklet%202007-11-10%20BJL.pdf>> accessed 24th July 2020.

⁴⁴⁷ General Comment No.10, note 7, para 51.

⁴⁴⁸ Article 3(e).

⁴⁴⁹ Article 7.

⁴⁵⁰ Article 7(f).

327. Regulations set out time limits dealing with the length of time someone may be kept in custody on arrest or, having attended the police station voluntarily, is subsequently arrested.⁴⁵¹

Involving parents

328. The Young Offenders Law allows the Court to require a parent(s) or guardian of the child who is resident in SoJ to attend the court 'during all stages of proceedings', unless it would be unreasonable or unnecessary.⁴⁵² Regulations provide for such steps as are reasonably practicable to be taken to inform a parent(s) or guardian who could be required to attend the court under this provision of the fact that the child/young person has to attend court and the date and time of the appearance.⁴⁵³

329. The Police Procedures and Criminal Evidence (Jersey) Law 2003 includes provisions relating to the arrest of 'persons not of full age' which require steps to be taken to identify a person responsible for the arrested person's welfare,⁴⁵⁴ and informing them of the arrest, the reason for the arrest and where the person is being detained.⁴⁵⁵

330. The Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004 makes provision for an appropriate adult to accompany a child at the police station. 'Appropriate adult' is defined first and foremost as being the child's parent(s) or guardian.⁴⁵⁶

331. The Young Offenders Law requires that following a decision by the court that a young person should receive a sentence of youth detention, the Placement Panel must consider '*the opinion of any person having parental responsibility for the child or young*

⁴⁵¹ Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004 Code C 16.7.

⁴⁵² Article 11.

⁴⁵³ Criminal Procedure (Jersey) Law 2018 Article 11(4).

⁴⁵⁴ Article 53(1).

⁴⁵⁵ Article 53(2).

⁴⁵⁶ Code C 1.7.

person'.⁴⁵⁷ Where a child or young person (under the age of 18) is involved in a PHE, they should be accompanied by a parent(s) or other appropriate person.

Right of appeal

332. The Young Offenders Law provides for a Youth Appeal Court consisting of the Bailiff and 3 members of the Placement Panel who were not involved in the original youth court proceedings.⁴⁵⁸ The Magistrates Court (Miscellaneous Provisions) (Jersey) Law 1949 Part 5⁴⁵⁹ applies to appeals to the Royal Court from the Magistrates Court. This includes a provision that appeals heard under this Part cannot be appealed further.⁴⁶⁰

Findings: Article 40

333. SoJ legislation introduces a comprehensive regime of youth justice in Jersey. However, we have found the following gaps in legislation:

- There is no overriding statement of principle ensuring that the best interests of the child are a priority in the youth justice system.
- The Young Offenders Law does not expressly require detention to be used as a measure of last resort.
- SoJ legislation includes the possibility of detention '*during Her Majesty's pleasure* for the most serious offences.
- The Young Offenders Law has no provision requiring the child to be heard from directly in criminal proceedings.
- The minimum age of criminal responsibility of 10 years of age is too low.
- Legislation permits children to be tried alongside adults in some cases.
- There is no requirement that criminal charges are read and explained to children.
- Legislation does not specify time limits for criminal matters to be disposed of against children.

⁴⁵⁷ Article 19(d).

⁴⁵⁸ Article 29.

⁴⁵⁹ By virtue of the Criminal Justice (Young Offenders) (Jersey) Law, Article 29(2).

⁴⁶⁰ Article 26(2).

- Legislation does not require children should benefit from the lightest sentence available, whether this be the sentence prescribed at the date of commission of an offence, or at time of sentencing.
- In some instances, children may be detained with adults, and SoJ legislation does not prevent this.
- Legislation does not ensure that children are provided with legal aid when charged with a criminal matter.

Collated Findings: Special Protection Measures

334. We have found the following gaps in SoJ legislation, or policy in areas where legislation might be anticipated, in the area Special Protection Measures:

Article 22

- a) There is no statutory (or other) provision for a legal adviser to be available before an UASC makes a claim for asylum.
- b) There is no legislation which would guarantee legal aid for an UASC or separated child.
- c) The Children Law does not make specific provision in relation to accommodation that may be provided by the Minister for UASC or separated children.
- d) An UASC or separated child is not guaranteed access publicly funded education until the outcome of their application for asylum is known.
- e) There is no statutory guarantee that an UASC or separated child will not be detained in secure accommodation or youth detention for immigration purposes.
- f) There are no specific measures which would ensure UASC and separated children receive their rights to health care, the benefits of social security, and of housing.
- g) SoJ criminal law does not include particular offences to protect UASC or separated asylum-seeking children from criminal harms.
- h) The Hague Convention has not been given effect in Jersey.
- i) The JIR fail to make provision in areas where it might be anticipated there would be legislation to ensure the rights of USAC or separated children:
- j) The JIR do make clear when an UASC or separated child seeking asylum will receive a Jersey Residence Permit.
- k) The JIR may result in the denial of Indefinite Leave to Remain based on criminal behaviour or other behaviour for offences committed whilst a minor.

- l) The JIR make no provision for family reunification where a child is granted refugee status.
- m) The JIR make no provision for a child to apply for leave to enter and/or remain in Jersey to be with family members other than parents.
- n) The JIR do not require the best interests of the child to be taken into account when decisions are made about return of an UASC or separated child to their country of origin or other intermediary country.

Article 30

- o) A child's linguistic, cultural or ethnic background are not expressly required to be taken into account when applying the welfare test under the Children Law.
- p) SoJ does not protect or promote the Jèrriais language as an indigenous language.

Articles 32-36

- q) Legislation creating drug offences does not specifically criminalise adults who might involve or seek to involve children in the production or trafficking of illegal drugs and psychotropic substances.
- r) There is no SoJ legislation expressly protecting children against modern day slavery.

Article 37(b)-(d)

- s) The Children Law does not require best interests to be taken into account as a primary consideration where a child is deprived of their liberty under the legislation.
- t) The Mental Health Law does not require best interests to be taken into account as a primary consideration where a child should be deprived of their liberty under the legislation.
- u) The Mental Health Law does not include provision to ensure a child detained under the Law can maintain contact with their family.
- v) The Mental Health Law does not permit a child to nominate a preferred 'nearest person'.
- w) There do not appear to be any express and specific standards in place concerning the treatment of children deprived of their liberty for mental health reasons.
- x) Children may be detained alongside adults in the secure estate or when detained under the Mental health Law.

Article 40

- y) There is no overriding statement of principle ensuring that the best interests of the child are a priority in the youth justice system.

- z) The Young Offenders Law does not expressly require detention to be used as a measure of last resort.
- aa) SoJ legislation includes the possibility of detention '*during Her Majesty's pleasure* for the most serious offences.
- bb) The Young Offenders Law has no provision requiring the child to be heard from directly in criminal proceedings.
- cc) The minimum age of criminal responsibility of 10 years of age is too low.
- dd) Legislation permits children to be tried alongside adults in some cases.
- ee) There is no requirement that criminal charges are read and explained to children.
- ff) Legislation does not specify time limits for criminal matters to be disposed of against children.
- gg) Legislation does not require children should benefit from the lightest sentence available, whether this be the sentence prescribed at the date of commission of an offence, or at time of sentencing.
- hh) In some instances, children may be detained with adults, and SoJ legislation does not prevent this.
- ii) Legislation does not ensure that children are provided with legal aid when charged with a criminal matter.

End of Report

APPENDIX 1

States of Jersey, Preliminary Report



UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

and

Optional Protocol on the involvement of children in armed conflict

Optional protocol on the sale of children, child prostitution and child pornography

Preliminary report prepared by the Government of Jersey

September 2013

INTRODUCTION AND ORGANISATION OF THE REPORT

IMPLEMENTATION

1. General measures

2. Definition of the Child

- A. Definition of the child (Article 1)

3. General principles

- A. Legislation
- B. Non-discrimination (Article 2)
- C. Best interest of the Child (Article 3)
- D. Right to life; survival and development (Article 6)
- E. Respect for the views of the child (Article 12)

4. Civil Rights and freedoms

- A. Name; nationality; preservation of identity (Article 7 and 8)
- B. Freedom of expression, association, thought, conscience, religion (Article 13, 14 and 15)
- C. Right to privacy (Article 16)
- D. Access to appropriate information (Article 17)
- E. Torture, cruel, inhuman or degrading treatment (Article 37.a)

5. Family environment and alternative care

- A. Parental responsibility and guidance (Article 5 and Article 18.1 and 18.2)
- B. Separation from Parents (Article 9)
- C. Family reunification (Article 10)
- D. Illicit transfer and non-return (Article 11)
- E. Abuse and neglect (Article 19)
- F. Child deprived of family environment (Article 20)
- G. Adoption (Article 21)
- H. Period review of placements (Article 25)
- I. Recovery of maintenance (Article 27.4)
- J. Physical and psychological recovery and re-integration (Article 39)

6. Basic health and welfare

- A. Right to life, survival and development (Article 6)
- B. Childcare services and facilities (Article 18.3)
- C. Disabled children (Article 23)
- D. Health and health services (Article 24)
- E. Social Security and standards of living (Article 26 and 27)

7. Education, leisure and cultural activities

- A. Right to education; accessibility of education (Article 28)
- B. Aims of Education (Article 29)
- C. Leisure and cultural activities (Article 31)

8. Special protection measures

- A. Refugee Children (Article 22)
- B. Right to enjoy own culture (Article 30)
- C. Economic exploitation (Article 32)
- D. Drug abuse (Article 33)
- E. Exploitation, sale trafficking and abduction (Article 34, 35 and 36)
- F. Children deprived of their liberty (Article 37.b.c.d)
- G. Children in armed conflict, physical and psychological recovery (Article 38 and 39)
- H. Administration of juvenile court (Article 40)

9. Optional protocols

10. Annex

- A. Statistical information
- B. Key strategic documents and legislation to accompany the report

Introduction

The following report is prepared to support the request by the Government of Jersey (also known as the States of Jersey) to have the United Kingdom's ratification of the United Nations Convention on the Rights of the Child (UNCRC) extended to Jersey.

This is a preliminary report for the United Kingdom government which clearly sets out that the Bailiwick of Jersey is currently compliant with the majority of UNCRC Articles. This report would be followed, within two years of entry into force of the Convention in respect of Jersey, by a comprehensive initial report to the UN Committee on the Rights of the Child. This would be in accordance with Article 44 (1) of the Convention and would provide further information on the measures that have been adopted which give effect to the rights recognised in the UNCRC and the progress made on the enjoyment of those rights in Jersey.

Thereafter a periodic report shall be prepared every five years.

Organisation of the report

The structure is in accordance with the General Guidance regarding the form and content of periodic reports to be submitted by State Parties under article 44 (1), and covers 'clusters' of articles under the following headings:

1. General measures of implementation (Articles 4, 42 and 44 para.6 of the Convention)
2. Definition of the child (Article 1)
3. General principles (Articles 2, 3, 6, and 12)
4. Civil rights and freedoms (Articles 7, 8, 13-17 and 37(a))
5. Family environment and alternative care (Articles 5, 9-11, 18 paras. 1 and 2, 19-21, 25, 27 para. 4, and 39)
6. Basic health and welfare (Articles 6, 18 para. 3, 23, 24, 26 and 27 paras. 1-3)
7. Education, leisure and cultural activities (Articles 28, 29 and 31)
8. Special protection measures (Articles 22, 30, 32-36, 37(b)-(d), 38, 39 and 40)
9. Optional protocols to the Convention on the Rights of the Child
10. Annex – statistical information.

CHAPTER 1: GENERAL MEASURES OF IMPLEMENTATION

A. Overview, concluding observations and follow-ups

This is a preliminary report to the United Kingdom government in respect of Jersey. As such there are no follow-ups to previous Committee observations.

This report sets out that the Bailiwick of Jersey is compliant with the majority of UNCRC Articles and provides information on the few areas where compliance is to be given further consideration.

The Government of Jersey is not seeking any reservations with regard to the UNCRC.

B. Measures to harmonize national law and policy with the provisions of the Convention

1. Legislation

Whilst Jersey is compliant with the majority of the Articles, the Government of Jersey will be bringing forward, or is considering bringing forward, draft legislation and/or new regulations over the next 5 year period which will serve to further enhance the jurisdiction's compliance. This includes:

- A. an updated Children (Regulation of Employment) (Jersey) Order 2011 will be brought forward extending controls to children aged 17 and over, as the current Order only applies to children aged up to 16 years
- B. consideration will be given to updating the Shipping (Employment of Young People) (Jersey) Order 2007 to ensure children are not placed in a potentially harmful environment on shipping boats
- C. an amendment to the Employment (Jersey) Law 2003 will be brought forward introducing legislation related to maternity, paternity and adoption leave
- D. Consideration is being given to extending the European Convention on the Adoption of Children 2008 to Jersey. This would require amendments to the Adoption (Jersey) Law 1961 to provide for greater access to information about an adopted person's origins
- E. The Regulation of Care (Jersey) Law 201- which is currently being developed will provide for increased regulation of care settings and put in place a legal requirement for Disclosure and Barring Service checks (DBS)
- F. it is anticipated that during 2014 Jersey will seek to have the UK's Safeguarding Vulnerable Groups Act 2006 extend to it by Order, thus ensuring that UK best practice with regard to vetting and barring is adopted in Jersey
- G. consideration is being given to amending the Criminal Justice (Young Offenders) (Jersey) Law 1994 in order to raise the age of criminal responsibility to 12 years

Amendments to the Criminal Justice (Young Offenders) (Jersey) Law 201- have been drafted, pending consideration by the Government of Jersey, which would allow a person who has attained the age of 15 but who is not 18 to serve custodial or remand sentences in the secure welfare unit, as opposed to the Prison or the Young Offenders Institute, where it is deemed in the best interests of the child alongside considered of the needs of other resident children.

2. International Conventions

The Human Rights (Jersey) Law 2000 gives effect in domestic law to rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) by requiring all legislation to be interpreted, as far as possible, in a way which is compatible with the Convention rights; and by requiring public authorities not to act in a way which is incompatible with the ECHR Convention rights.

In addition to rights and freedoms under the European Convention on Human Rights and those provided for in domestic legislation, Jersey is a signatory to the following international conventions, all of which have relevance to, and help ensure compliance with, the UNCRC:

- A. ICCPR – International Covenant on Civil and Political Rights – extended to Jersey – refers to, amongst other matters, right to life, freedom of religion, freedom of speech, freedom of assembly etc.
- B. ICESCR – International Covenant on Economic, Social, Cultural Rights – extended to Jersey – labour rights, right to health, right to education, right to an adequate standard of living etc.
- C. UNCAT – United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment – extended to Jersey (Jersey submitted its contribution to the UK's 5th periodic review – UK examined by UN in May 2013).
- D. ILO – International Labour Organisation (Nos. 29 and 105 on forced labour are extended) (Nos. 138, 182 and 183 are not extended) 138 applies to the minimum age convention.
- E. UNCATOC – United Nations Convention against Transnational Crime – extended to Jersey (very much a police/customs issue).
- F. Geneva – The Four principle Conventions – armed struggle and warfare – extended to Jersey (no further comment)

3. Goals and objectives

- A. The Government of Jersey has set out its vision for children and young people in its Children and Young People's Strategic Framework (2011). The Government's vision is *for all children and young people to grow up in a safe, supportive Island community in which they achieve their full potential and lead happy, healthy lives*. The six key outcomes are for all children and young people to:
 - i) Be healthy
 - ii) Be safe
 - iii) Achieve and do
 - iv) Grow confidently
 - v) Be responsible and respected
 - vi) Have a voice and be heard.
- B. The delivery of these outcomes are underpinned by five core principles
 - i) the welfare of all children is a principal consideration
 - i) we will "think family" – supporting families is critical to supporting children

- ii) early intervention is key - we must invest upfront to prevent problems developing in the first place
- iii) services must be designed and commissioned based on need, impact, effectiveness, efficiency and value for money
- iv) we must work in partnership to ensure best use of knowledge, expertise and resources.

4. Strategic coordination

- A. In 2010 the Government of Jersey formed the Children's Policy Group in order to ensure the effective, coordinated development of all policies and services related to children and young people. The Children's Policy Group includes the Ministers for Home Affairs, Health & Social Services, Education, Sport & Culture plus the Assistant Chief Minister responsible for co-ordinating social policy across government. It is also attended by the Chief Executive Officers of those Departments together with the Chief Probation Officer and the Chair of the Jersey Children's Safeguarding Partnership Board.
- B. The Children's Policy Group will take the lead for the strategic coordination and monitoring of all activity and development related to ensuring compliance with the Convention. It will achieve this by working at Ministerial level, through the Council of Ministers.

5. Effectiveness analysis

- A. The Children's Policy Group will, by the next periodic report, put into place a system for monitoring application of the Convention and compliance with the 40 Articles. This will include ensuring that the relevant information is appropriately disseminated in order that children and others can judge the extent to which their rights, as set out in the Convention, are being observed.
- B. This monitoring will include independent oversight but will not take the form of a Commissioner for Children which is not perceived to be a proportionate or cost effective response in a small Island community.

6. Implementation programmes and action plans

- A. The Health and Social Services Department is the department of the Government of Jersey (also known as the States of Jersey) which has principle responsibility for the welfare of children. This includes through the provision of health care services and children's social services function.
- B. The health care services delivered and/or funded by the Health and Social Services Department do not include primary care services such as GP's or opticians which operate as private business in Jersey, albeit the Social Security Department do provide some element of subsidisation for all GP consultations after a person has lived in Jersey for 6 months or more.
- C. The Children's Social Services function is comparable to the children's social services function delivered by UK authorities and includes; assessment and child protection teams; childcare team; home finding team; residential services and family centres / family support services.
- D. Departmental staff work in multi-disciplinary teams both across and within the Department and other Departments such as the police; family court services and voluntary and community sector organisations.

- E. The Health and Social Services Department has a business plan setting out its priorities over the coming year in relation to business as usual. In addition, the Department is currently undertaking a major programme of change in order to redesign its current service provision. This will see additional investment in community based services and early intervention services designed to support children and families.
- F. The Education, Sport and Culture Department has responsibility for the education of children and the provision of government funded sporting, leisure and cultural activities. This includes the provision of free school places for children of compulsory school age; the provision of a comprehensive youth service and the provision of sporting, cultural and leisure activities that support a child's development.
- G. The Education, Sport and Culture Department has a business plan setting out its priorities and in addition has key strategies in the following areas: education inclusion; early years; sport and information technology.

7. Resources

- A. Jersey's investment in children is substantial and wide ranging. It is not however possible to provide an accurate single figure or to provide an assessment of the percentage of GDP spend on children because of the way Departmental budgets are structured, for example, the Health and Social Services budget the amount spent on the care and treatment of under 18 year olds cannot be extrapolated from the amount spent on over 18 year olds.
- B. Departmental budgets in 2013 include:

Children's social services	£15.5m
Women and children's hospital service	£10.7m
(non-fee paying schools):	
Pre-school education	£3.6m
Primary education	£24.8m
Secondary education	£24.2m
Special education needs and special schools	£7.9m
Other	
Fee paying schools	£10.3m
Youth Service	£1.4m
Further and higher education	£20.2m

8. Statistical data

- A. Currently it is the responsibility of individual departments to collect monitoring and statistical data to inform the development of policy and services related to children. This data is not centrally collated although it is proposed that a central data set should be developed.
- B. A Memorandum of Understanding is however being developed by the Children's Safeguarding Partnership Board and this will place an obligation on all partners to provide information that enables monitoring of the effectiveness of what is done to safeguard and protect children. This will be based on the UK's Working Together 2013 guidance.

C. Publication and consultation on this report

- A. Copies of this report will be made publically available at the point at which the UK Government extends ratification of the Convention to Jersey. The report will be distributed to all government departments and voluntary and community organisations concerned with the welfare of children.
- B. Children friendly information, promoting the Convention and the rights enshrined within it, will be circulated via schools, youth groups and voluntary and community organisations for onward dissemination to children. This will be translated into Portuguese and Polish, which are the two key community languages in addition to English and also into Jèrriais, the historic native language of Jersey.
- C. Information about the Convention will be disseminated to press and other media. A public facing bespoke section of the Government of Jersey website will be developed with the purpose of promoting the Convention.

CHAPTER 2: DEFINITION OF THE CHILD

A. Definition of the child (Article 1)

1. In Jersey a person shall attain full age on attaining the age of 18 years regardless of whether they are male or female: Age of Majority (Jersey) Law 1999
2. Full time education is compulsory for all children from the first day of the academic year in which their fifth birthday falls, until the 30th June in the school year in which their 16th birthday falls: Education (Jersey) Law 1999
3. The minimum age of criminal responsibility is 10 years, as it also is in England and Wales. The Children's Policy Group notes however that the UNCRC Committee does not consider a minimum age below 12 years to be acceptable and will be considering during 2016 whether to raise this to 12 years. Criminal Justice (Young Offenders) (Jersey) Law 1994
4. A court cannot impose a sentence of imprisonment or Borstal training on a person under aged 21, nor can a Court impose a youth detention sentence on a child under the age of 15 except where the offence is a grave crime, which if committed by an adult would carry a penalty of 14 years or more, or the offence is so serious that no other sentence could be imposed or if previous community penalties have failed: Criminal Justice (Young Offenders) (Jersey) Law 1994
5. Code C of the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004 was amended in February 2013 in order to ensure that all young people under the age of 18 are accompanied by an Appropriate Adult when being dealt with formally by the police.
6. A revision to the Mental Health (Jersey) Law 1969 came into effect on 1 January 2013 in Jersey recognizing that a "child" means a person who has not attained the age of majority.
7. From the age of 16 years a child can give effective consent to surgical, medical or dental treatment without their parents' consent: Consent to Medical Treatment (Jersey) Law 1973.
8. Children can vote in public elections from aged 16 years: Public Elections (Jersey) Law 2002.
9. Age of sexual consent for both heterosexual and homosexual activity is 16 years: Sexual Offences (Jersey) Law 2007.
10. People aged 16 years can marry with the consent of their parents/legal guardians or age 18 years without consent of parents/legal guardians: Marriage and Civil Status (Jersey) Law 2001.
11. A child under 18 may not buy alcohol and may not consume alcohol in licensed premises: Licensing (Jersey) Law 1974
12. The United Kingdom has made a declaration that it "interprets the Convention as applicable only following a live birth". (CRC/C/2/Rev.8, p.42.). The Government of Jersey makes the same declaration.

CHAPTER 3: GENERAL PRINCIPLES

D. Legislation

1. Principle provisions concerning the protection, care and welfare of children are contained in the Children (Jersey) Law 2002 and associated regulations and orders. The main provisions include:
 - a) welfare of the child
 - b) parental responsibility for children
 - c) children in family proceedings
 - d) ministerial support for children and families needing protection
 - e) use of secure accommodation
 - f) care and supervision of children
 - g) protection of children
 - h) abduction of children
 - i) employment of children
 - j) voluntary residential care homes
 - k) private arrangement for fostering children
 - l) rules of court
 - m) representation and assistance for children
2. Other matters relating to children are governed by:
 - a) The Adoption (Jersey) Law 1961 and the Adoption (Jersey) Rules 1962 which provide the steps to be taken by all parties in adoption proceedings, and through subsequent amendments, the establishment of an Adoption service and panel, arrangements for overseas adoptions and compliance with international conventions
 - b) The Protection of Children (Jersey) Law 1994 which prohibits taking of indecent photographs and makes provision to regulate the sale of goods seen as potentially harmful to children
 - c) Criminal Justice (Young Offenders) (Jersey) Law 1994 which sets out procedures for dealing with young offenders below the age of 21 years
 - d) Criminal Justice (Evidence of Children) (Jersey) Law 2002 which concerns the giving of evidence by children
 - e) Education (Jersey) Law 1999
 - f) Day Care of Children (Jersey) Law 2002

E. Non-discrimination (Article 2)

1. The Human Rights (Jersey) Law 2000 gives effect in domestic law to rights and freedoms guaranteed under the European Convention on Human Rights by requiring all legislation to be interpreted as far as possible in a way which is compatible with the Convention rights; and by requiring public authorities not to act in a way which is incompatible with the ECHR Convention rights
2. The Discrimination (Jersey) Law 201- was approved by the Government of Jersey in May 2013 and is awaiting Royal assent. This law is an overarching law that provides a framework for protection against discrimination and it includes “race” as the first protected characteristic; subsequent parts to be introduced will deal with sex, age and disability. It is intended that sex discrimination and family friendly legislation will be prepared in 2014 and enacted in 2015; age discrimination regulations will be prepared during 2015 and enacted in 2016. A measured approach to the introduction of discrimination legislation is required in order to allow appropriate consultation to be undertaken and to give the community time to adapt.

3. In March 2010, the States of Jersey adopted an amendment to the Wills and Successions (Jersey) Law 1993, to confer on an illegitimate child the same rights of succession as if he or she were legitimate. Similarly, the rules as to succession to the estate of an illegitimate child are replaced with a rule that the succession is the same as if the child were legitimate, and any right of succession that is traced through an illegitimate child is to be traced as if the child were legitimate. The amendment came into force on 29 January 2011.
4. The Government of Jersey in its practices, policies and procedures ensures that no child is discriminated against due to his or her parents or guardian's, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property or birth. The Control of Housing and Work (Jersey) Law 2012 does, however, make provision for residential status categories which place proportionate and legitimate controls on access to work and housing and, by doing so, protect a proportion of the Island's housing stock for long established residents whilst also ensuring that housing is also available for newly arrived migrants. The Control of Housing and Work (Jersey) Law 2012 is Human Rights compliant.

F. Best interest of the Child (Article 3)

1. In 2010 the Government of Jersey formed the Children's Policy Group (CPG) consisting of: the Ministers of Home Affairs, Health & Social Services, and Education, Sport & Culture; the Assistant Chief Minister; the Chief Probation Officer and the Chair of the Jersey Children's Safeguarding Partnership Board. The CPG has been set up to ensure that services for children are coordinated and effective. The CPG's 'Statement of Purpose' sets out the requirement to uphold the aspirations of the UNCRC, in particular that the best interests of the child are a primary consideration.
2. Children (Jersey) Law 2002 sets out that when the Court determines any question with respect to the upbringing of a child, or the administration of its property, the child's welfare shall be the court's paramount consideration.
3. Children (Jersey) Law 2002 allows for decisions to be made in the best interest of the child, for example decisions pertaining to taking a child into care. Similarly the Criminal Justice (Young Offenders) (Jersey) Law 1994 provides for the prison governor to transfer young offenders in certain circumstances where it is in young offender's interest to do so. Transfer would be to facilities prescribed in the law, for example a hospital or medical facility.
4. The Government of Jersey works to ensure all institutions, services and facilities responsible for the care or protection of children shall conform with the standards in the following ways:
 - a) The Health and Social Services Department is resourced with professionally qualified staff, such as social workers; psychologists and therapists, who provide a range of services relating to the care and protection of children. Those professionally qualified staff have to be members of the relevant UK professional body as a prerequisite for local registration.
 - b) The Education (Jersey) Law 1999 provides for the regulation and inspection of all schools, colleges and educational provision, including the registration and inspection of private schools. Educational standards, safeguarding and children's welfare are all subject to regulation and quality assurance measures.

- c) The Daycare Registration (Jersey) Law 2002 lays out the framework for the regulation of all child care provision (over 2 hours per day) relating to: early years (day nursery, pre-school, family day carers); and all after-school, holiday and play provision from 5-12 years. Staff qualifications; DBS checks; accommodation; child; adult ratios and activities are subject to annual registration checks and continuous quality assurance.
- d) Legislation is in place to regulate a range of care services including nursing and residential homes and nursing agencies. Existing legislation will be strengthened through the Regulation of Care (Jersey) Law 201- which is currently being developed and will be implemented, with regard to long term care facilities, domiciliary care and nursing agencies in 2014/15. It is envisaged that regulations will then be extended to acute care, social services, primary care and dental care in 2020.
- e) The Government of Jersey has made financial provision for an independently chaired Children's Safeguarding Partnership Board which has the powers to investigate failures to protect children from harm, undertake Serious Case Reviews and ensure robust multi-agency working and standards of safeguarding across all services.
- f) HMP La Moye has a child protection policy compiled in accordance with a protocol agreed by the Jersey Children's Safeguarding Partnership Board. The policy is designed to ensure both the safety of children in custody and other children who come into contact with prisoners.

G. Right to life; survival and development (Article 6)

1. The right to life of all persons including children is recognised by the Human Rights (Jersey) Law 2000 which gave effect to European Convention on Human Rights.
2. As set out in Chapter 1 above, the Government of Jersey enters the same declaration as the UK in that it also "interprets the Convention as applicable only following a live birth". (CRC/C/2/Rev.8, p.42.) The Government of Jersey enters the same declaration.
3. For the purposes of the Termination of Pregnancy (Jersey) Law 1997, protection is given to the life of a foetus, except in circumstances when in the opinion of a medical practitioner termination is necessary to save the life of the pregnant woman or to prevent grave permanent injury to her physical or mental health, from the end of the twelfth week of pregnancy; or if in the opinion of two medical practitioners there is a substantial risk that, if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped, from the end of the twenty-fourth week of pregnancy.
4. The Government of Jersey makes considerable investment in services to ensure the survival and development of children. These are comparable to services elsewhere in the British Isles. In Jersey the infant mortality rate is very low (3.6 per 1,000 live births) and primary immunisation levels are very high (95-98% of children). Chapter 6 sets out details relating to health care provision.
5. Where a child is taken into care, a personalized care plan will be developed with the primary aim of ensuring that the care provided both protects the child and ensures their development, in order that they can reach their potential in life.
6. The Education (Jersey) Law 1999 places a requirement on the Minister of Education to provide all children of school age with a curriculum that supports their development.

H. Respect for the views of the child (Article 12)

1. The law requires all courts, in resolving disputes concerning a child to have regard for his/her wishes to the extent that these can be considered in light of their age and understanding. Furthermore, Article 75 of the Children (Jersey) Law 2002 provides the Court with the power to appoint a Guardian, and if deemed appropriate, a legal advocate to independently represent a child in care proceedings in order that their views may be heard.
2. Consent to Medical Treatment (Jersey) Law 1973 recognises effective consent to surgical, medical or dental treatment from the age of 16 years, unless it can be demonstrated that the individual is not competent to give consent. Where a child is under the age of 16, it is practice amongst health professionals to nevertheless seek the child's consent where that child has sufficient understanding to enable him/her to understand fully what is proposed
3. The Jersey Family Court Advisory Service, who provide Guardians in care proceedings and legal representation, ensure that children are heard in judicial and administrative proceedings
4. The Department for Education, Sport and Culture makes provision in guidance related to management of suspension and exclusions from school, and other similar administrative processes, for parents/legal guardians to represent the child and the rights of the child, in addition to making provision to ensure the child's participation wherever appropriate.
5. Jersey schools operate school councils providing opportunities for children's views to be known on issues pertaining to individual schools. Children are elected to school councils by their peers.
6. The Department for Education, Sport and Culture's Youth Service is working with charities on the Island to develop an advocacy project for children subject to a safeguarding issue.
7. The Health and Social Services Department launched a new advocacy service for children in July 2013. This service, commissioned from the NSPCC provides a voice for Looked After Children and children on the Child Protection Register.
8. An independent Board of Visitors provides oversight of Jersey's Children's Residential Homes helping ensure that all children in residential care have access to someone independent from their social worker and the staff managing and running the homes, who can help represent their issues and concerns. A different Board of Visitors provides the same support with HMP La Moye including to all children and young people who may be detained.

CHAPTER 4: CIVIL RIGHTS AND FREEDOMS

F. Name; nationality; preservation of identity (Article 7 and 8)

1. Under Part 5 of the Marriage and Civil Status (Jersey) Law 2001 it is a legal requirement to register all births in Jersey. Where the child has been given a name at birth this can be registered at birth although a new or additional name may be given and registered at baptism.
2. Nationality is conferred in accordance with the British Nationality Act 1981 which applies in Jersey. A child born in Jersey to a parent who is a British Citizen acquires British citizenship automatically. A child born in Jersey who does not become a British citizen at birth is entitled to register as per the British Nationality Act 1981.
3. Jersey has adopted the common format passport, as per the UK. The Lieutenant Governor acts as the issuing authority for passports in the Island.
4. Under UK legislation a child who acquired British Citizenship at birth or adoption cannot be deprived of it. A child who acquires British Citizenship by registration can only be deprived of it in exceptional circumstances, for example if acquired fraudulently, or it is deemed in the public interest and in doing so the child would not be made stateless.
5. The same rules to reduce statelessness apply in Jersey as in the UK.
6. The Children (Jersey) Law 2002 sets out that no person may cause a child to be known by a new surname without the written consent of every person who has parental responsibility for the child or the leave of the court.
7. The Adoption (Jersey) Law 1961 makes some provision with regard to access to birth records and to facilitate contact between adopted persons and their family of origin. However, it does not make specific provision with regard to the disclosure of information held by Jersey's Adoption Service about children who are put up for adoption, unlike the provision made in UK Adoption and Children Act 2002. In practice however, the Jersey Adoption Service does support the child's right to know their birth parents, where possible, by sharing information about the birth family, with their consent, at the time the adoption is arranged. Consideration is to be given to amending the 1961 Law.

G. Freedom of expression, association, thought, conscience and religion (Article 13, 14 and 15)

1. The Human Rights (Jersey) Law 2000 gives effect in domestic Jersey law to certain rights and freedoms in European Convention on Human Rights by requiring that all legislation in Jersey is to be interpreted, as far as possible, in a way which is compatible with that ECHR rights, and that public authorities should not act in a way which is incompatible with the Convention rights. This provides in law for freedom of expressions, thought, conscience and religion.
2. It is a fundamental principle of Jersey Law that anything is permitted which is not expressly forbidden, therefore a person, including a child, has freedoms set out in the Convention, subject to laws and restrictions necessary to secure their welfare and protect others, for example; criminal justice and data protection legislation.
3. In Jersey there are no blanket curfew provisions or measures which specifically prevent young people gathering together. In addition Jersey law does not make provision for Anti-Social Behaviour Orders as per the UK's Crime and Disorder Act 1999.
4. In Jersey there is no compulsory state religion. There is complete freedom of religious worship and no restrictions on the right of any person to change religion.
5. The Education (Jersey) Law 1999 provides for the right of parents/legal guardians to remove their child from a mainstream school and to home tutor instead and to withdraw their children from religious education or worship. The law establishes the Religious Education Advisory Council which advises the Minister on the religious education in schools.

H. Right to privacy (Article 16)

1. The Human Rights (Jersey) Law 2000 also gives effect to Article 8 of the ECHR thus provides a legal right to all persons, including children, to his/her privacy, family life, home and correspondence.

I. Access to appropriate information (Article 17)

1. All children have access to filtered internet resources and interactive ICT materials, and to children's books within their schools and public and mobile libraries. These services are free of charge. School holiday reading programmes and other activities are provided. Research shows that 25.3% of all public library loans during 2012 were to borrowers under the age of 18 years.
2. The school curriculum includes all teachers being trained in promoting the use of children's books, ICT and mass media from nursery education upwards.
3. The Day Care of Children (Jersey) Law 2002 provides for children's right of access to developmentally appropriate experiences in day care settings which will include access to materials which promote their development in accordance with Article 17 and Article 29 of the Convention.
4. Television and national radio programming provided from the UK is subject to control by the United Kingdom Government, including the requirement in relation to sufficient provision for programming for children. This also applies to cinema broadcasting and the associated system of classification based on an age related determination of suitability of content.

J. Torture, cruel, inhuman or degrading treatment (Article 37.a)

1. Protection against torture and cruel, inhuman or degrading treatment is provided through extension of ratification of the International Covenant on Civil and Political Rights; the ECHR; the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention against Torture and Inhuman or Degrading Treatment or Punishment and the Torture (Jersey) Law 1990
2. No person, adult or child, may be subject to these behaviours in Jersey. This includes no capital punishment in Jersey and, under the Island's criminal justice system no person, adult or child, can be sentenced to any form of corporal punishment
3. By way of an Act issued by the Government of Jersey Education Committee in 1986, the use of corporal punishment by teachers in all government provided schools and private schools in Jersey is prohibited. Secondary schools have nominated staff who act as lead behaviour managers promoting and supporting positive behaviour amongst pupils.
4. Corporal punishment of a child is treated as a criminal assault, however under Article 79 of the Children (Jersey) Law 2002 the defense that corporal punishment was reasonable can be raised by a parent or a relative, or someone else with care of the child who has permission of the parent, and where no more than a hand is used. The Government of Jersey, in a position broadly comparable to the UK Government, takes the view that it would be inappropriate to potentially criminalize responsible parents who use reasonable corporal punishment. The Government of Jersey ensures investment in parenting support programs that provide advice on positive ways of dealing with behaviour and avoiding smacking.
5. The Criminal Justice (Young Offenders) (Jersey) Law 1994 establishes that the minimum age of criminal responsibility is 10 years, as it also is in England and Wales. Sentences of life imprisonment or detention are possible where a child has committed an offence which could be punished in the case of an adult by life imprisonment they shall be detained at Her Majesty's pleasure. During 2016 consideration will be given as to whether to raise age of criminal responsibility to 12 years.
6. Children's residential care services and the Department for Education, Sport and Culture both have restraints policies putting in place measures to protect children by ensuring physical restraint is only used in exceptional circumstances. The policies focus on de-escalation and resolution in the first instance, with physical restraint as a last resort. The Policy includes therapeutic crisis intervention which is designed to help children and young people learn constructive ways to handle crisis. Positive behavior support policies are also in place across special needs services.

CHAPTER 5: FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental responsibility and guidance (Article 5 and Article 18.1 and 18.2)

1. The Government of Jersey interprets the references in the Convention to 'parents' to mean only those persons who, as a matter of Jersey law, are treated as parents. This includes cases where the law regards a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent. This is in accordance with the declaration entered by the UK
2. The Government of Jersey believes that all children should grow up in a safe, supportive home and Island community. As set out in the Children and Young People's Framework a core principle that underpins the government's approach is to "think family".
3. The Children (Jersey) Law 2002 recognises the right of parents to bring up their children and interprets "parental responsibility" to include all the rights, duties, powers and responsibility of the parent. The Law only confers on the Court the power to make an order that affects the right of parents to bring up their children when it considers that making that order is better for the child than not making an order.
4. Under the Children (Jersey) Law 2002 parental responsibility is vested in the parents where they were married at the time of birth. Where they were not married the mother has parental responsibility for the child although the father can acquire it in accordance with the Law.
5. The Education (Jersey) Law 1999 recognises the rights of parents in relation to all matters pertaining to a child's education and the duties of parents in relation to ensuring regular attendance at school. It also recognizes the principle that both parents have common responsibilities. This is recognised in all associated policies, for example where parents live separately, whether through divorce or for any other reason, both will receive communication about their child and both will be afforded opportunities to make their view known.
6. The Department for Education, Sport and Culture ensures that it clearly identifies those people who hold parental responsibility for all children admitted into school during the school year or transferring between schools.
7. The government provides assistance to parents in multiple ways including provision of; income support and social housing for low income families; parenting support classes; family centred early intervention support and respite care.

B. Separation from parents (Article 9)

1. Children (Jersey) Law 2002 does not permit a child to be separated from his/her parent/s except with the parent/s decision, or by a decision of the Court where it is in the best interests of the child. Any separation must be in accordance with the Law and associated policies.
2. The Health and Social Services Department may apply to the Court for a child to be placed under the care or supervision of the Department where the Court is satisfied that the child is suffering, or likely to suffer, significant harm.

3. Article 75 of the Children (Jersey) Law 2002 provides the Court with the power to appoint a Guardian, and if deemed appropriate, a legal advocate to independently represent a child in care proceedings in order that their views may be heard.
4. The Family Court Advisory Service reports to the Court independently in any matters brought by the Health and Social Services Department to remove a child from its parents.
5. The Family Court Advisory Service also provides assistance to the child and the Court in private law matters and promotes direct contact with both parents on a regular basis unless it's contrary to the child's best interests. Where parents live apart, whether divorced or otherwise, the law allows them to determine who the child will live with, but in the case of dispute, the Court will make a Residence Order stating where the child shall live and a Contact Order stating what contact the other parent shall have with the child.
6. Whether in public or private family proceedings the Court will provide for all interested parties to have an opportunity to participate in proceedings and, for any child, who is separated from his/her parents to maintain contact with those parents, except where it is not in the child's best interests. The Children (Contact in Care) (Jersey) Regulations 2005 set out the circumstances in which contact and/or information can be withheld from parents or others.
7. When a parent is in custody in Jersey, children have the right to visit their parent and facilities are made available.

C. Family reunification (Article 10)

1. Whilst a child has no absolute right of entry to Jersey for the purposes of family reunification it is usually provided for. The Immigration Order (Jersey) 1993 provides for the Lieutenant-Governor of Jersey to set out Directions as to the practice to be followed when regulating the entry into and stay in Jersey of foreign nationals who do not have the absolute right to live in Jersey. Under these Directions, subject to certain conditions, foreign nationals can usually exercise rights of access to a child resident in Jersey. The Directions also allow children of foreign nationals, who are settled in Jersey, to enter and remain in Jersey provided they meet the requirements of the Directions.
2. Jersey Customs and Immigration ensures that whenever a child is subject to immigration control, the welfare of children is safeguarded.

D. Illicit transfer and non-return (Article 11)

1. The Hague Convention on the Civil Aspects on International Child Abduction and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children are both enabled in Jersey through the Child Abduction and Custody (Jersey) Law 2005. These two international Conventions relate respectively to the civil aspects of international child abduction and to the recognition and enforcement of custody decisions to be extended to Jersey.
2. In addition, a range of domestic legislation is in place to ensure protection for children including the Criminal Law (Child Abduction) (Jersey) Law 2005, which amends criminal law relating to the abduction of children and the Child Custody (Jurisdiction) (Jersey)

Law 2005, which provides for the enforcement of child custody orders made in the UK or Jersey, plus restrictions on the removal of children from Jersey or any part of the U.K.

E. Abuse and neglect (Article 19)

1. The Children (Jersey) Law 2002 provides a legal framework to protect children by imposing penalties for cruelty, abuse and neglect. The police have special powers to arrest suspected offenders. In addition, the law protects children against common law offences such as indecent assault and rape.
2. A new Multi-Agency Safeguarding Hub will be put in place from August 2013. It will provide co-ordinated referral management for all children at risk harm. It includes representatives of the police, children's social services, education welfare and other agencies at the front-line of child protection issues.
3. The Police's Public Protection Unit has a dedicated child protection team, dealing with concerns; investigating and prosecuting offenders; a domestic violence unit working to prevent and reduce domestic abuse and an offender management unit, dedicated to the identification, assessment and management of sex offenders who pose a risk to all members of the community including children.
4. The Health and Social Services Department holds a register of all children who are considered at risk of abuse (known as the Child Protection Register). An inter-agency plan is prepared with a view to protecting each child on that register. A child is entered onto the register as a result of a child protection conference. All entries are reviewed every three months. If deemed necessary for the protection of a child, the Health and Social Services Department may apply to the Court for an order to take that child into the care of the department.
5. The Department for Education, Sport and Culture has policies in place to identify and respond to potential neglect or abuse. This includes ensuring every member of staff working with children has a responsibility for child protection; every school having a Designated Teacher for Child Protection and a Deputy and all Senior Youth Workers having a designated role in child protection. This role includes responsibility for adherence child protection policy and procedures; coordinating the response for any incident of suspected or actual child abuse; maintaining factual records; ensuring children on the Child Protection Register are monitored; ensuring training for all school / youth service staff is continually updated – initial child protection training is delivered to all teaching and non-teaching staff.
6. The Department for Education, Sport and Culture facilitates child protection courses for those working with young people in sporting clubs and activities to ensure safeguarding. Where these clubs meet the requirements of the 2002 Day Care (Jersey) Law these are regulated by ESC's Childcare Registration team.
7. Multi-agency support teams operate in four Jersey secondary schools. Membership of these teams include: Senior school manager; Social worker; Counsellor; Attendance Officer; Behaviour Support Manager; Learning Support Coordinator and Educational Psychologist.
8. The Department of Education also has an E-safety Officer in place with a designated co-ordinator in each school.
9. The Government of Jersey has made financial provision for an independently chaired Children's Safeguarding Partnership Board which has the powers to investigate failures to protect children from harm, undertake Serious Case Reviews and ensure robust multi-agency working in order to safeguard children. Pending development of legislation to place the Board on a statutory basis, a Memorandum of Understanding will be

developed during 2013 committing all signatories to participate in the activities of the Board.

10. A Committee of Inquiry into historical child abuse in Jersey has been established to ascertain the facts relating to failings in Jersey's historical residential child care system in which some children suffered abuse and neglect. The Committee is to be led by a Chairperson with a legal/judicial background who is independent of Jersey and of all interested parties. The Government of Jersey, acknowledging the abuse that some children were subjected too in past years, have already delivered a Historic Abuse Redress Scheme for those who were in full-time residential care between 9th May 1945 and 31st December 1994. A number of reviews have also been undertaken with a view to understanding the conditions which allowed the abuse to happen and ensure all possible steps are taken to protect children in future including:
 - a. Williamson Report: An Inquiry into Child Protection in Jersey – June 2008
 - b. The Howard League for Penal Reform – Jersey Review: November 2008
 - c. Williamson Report: Implementation Plan – January 2009
 - d. Health, Social Security and Housing Scrutiny Panel Review – July 2009
 - e. Report by the European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment – July 2010
 - f. Youth Justice in Jersey: Options for Change – August 2010
 - g. Care Inspectorate Inspection of Children's Services - January 2012
 - h. Action for Children – Review of Services for Children and Young People with Complex and Additional Needs – September 2012
 - i. Voice of the Child Report – July 2012.
11. The Government of Jersey has apologized to those children who suffered harm and has acknowledged the historical failings.
12. The Government of Jersey supports a Domestic Violence Forum which co-ordinates a strategic multi-agency approach to address domestic violence. The Government also provides financial support to the Women's Refuge which provides a secure place for victims and their children, plus training and awareness-raising in schools and other environments.
13. A Multi-Agency Risk Assessment Conference system is currently being set up to support high risk victims of domestic abuse.
14. Rehabilitation of Offenders (Jersey) Regulations 2002 enables Disclosure and Barring Service checks (DBS) to be undertaken on individuals who work with children and/or vulnerable adults.
15. Existing legislation, including the Nursing and Residential Homes (Jersey) Law 1994 and the Nursing Agencies (Jersey) Law 1978, place statutory requirements on organisations covered by the legislation to ensure people working with children, or coming into contact with children, in those environments are fit to do so. This includes requiring such organisations to undertake DBS checks on their staff. This "fitness" requirement will be replaced by an explicit requirement for DBS checks under the new Regulation of Care (Jersey) Law 201- which is currently being developed and will be implemented, with regard to long term care facilities, domiciliary care and nursing agencies in 2014/15. It is envisaged that regulations will then be extended to actual care, social services, primary care and dental care in 2020.
16. The Children (Jersey) Law 2002 sets out which people may be disqualified from caring for children as foster carers or in voluntary homes (residential care homes). This includes those who, for example, have committed offences which makes them unfit to care for children and parents whose own children have been subject to a care order. Teachers are subject to vetting and criminal records checks. The Day Care of Children

(Jersey) Law 2002 extends those disqualifications to people looking after children in day care settings.

17. It is anticipated that during 2014 Jersey will seek to have the UK's Safeguarding Vulnerable Groups Act 2006 extend to it by Order, thus ensuring that UK best practice with regard to vetting and barring is adopted in Jersey.

F. Child deprived of family environment (Article 20)

1. Where no person has parental responsibility for a child, or the child is lost or has been abandoned, or the person who has been caring for the child is prevented from doing so, or the child is at risk of harm the Children (Jersey) Law 2002 places a duty on Health and Social Services Minister to take the child into their care.
2. Where a child is in the care of the Minister (a Looked After Child) qualified social workers from the Children's Social Services Department make suitable arrangements for the care and accommodation of that child. This could include being placed with other family members or friends (approx. 30% of Looked After Children), foster care (approx. 40%) or placed in one of the five residential children's homes in Jersey. A very small number may also be placed in specialist facilities in the UK in order to provide them with specialist support that is not available in a small Island community. Reviews of children in care are held every three months in the first year and every six months thereafter.
3. The Children (Voluntary Homes) (Jersey) Order 2005 makes provision in relation to the placement of children in residential care homes operated in the private sector and sets out the standards associated with the running of those homes.
4. In 2012 there were 83 Looked After Children in Jersey, this includes a significant proportion who are older teenagers and who will be leaving care in the next few years. The average number of Looked After Children per year from 2005 to 2012 is 81.75
5. When giving consideration to the temporary or permanent removal of children from their parents the law determines that the Court must give regard to the wishes and feelings of the child, the child's physical, emotional and educational needs plus their background and any characteristics which the court considers relevant. This would therefore include consideration of ethnic, religious, cultural or linguistic matters.
6. Where a child is deprived of their liberty by the Court following a criminal conviction the child will be facilitated to remain in Jersey wherever possible. Depending on the age and sex of the child they may be accommodated in the Young Offenders Institution or the adult prison, subject to safeguards, or in Jersey's secure welfare unit. In very rare circumstance they may be placed in a UK facility up until the point at which their needs can be met and they can return to Jersey (only one young offender has been placed in a facility outside Jersey in the previous 5 years).
7. Provision is made for the independent inspection of services for Looked After Children or children who are detained in a secure unit including periodic inspection by competent external agencies (the Scottish Care Inspectorate); an Independent Board of Visitors to provide oversight of Jersey's Children's Residential Services; a Board of Visitors providing visiting to people detained in HMP La Moye, including in the Young Offenders Institution.
8. Provision is made to support Looked After Children in the school environment. Every school in Jersey has a Designated Teacher for Looked After Children who is responsible for tracking the wellbeing, academic progress, attendance and social interaction of

Looked After Children. This includes the development of a Personal Education Plan for each child and the teacher participating in Looked After Children reviews.

G. Adoption (Article 21)

1. The adoption of a child is provided for in the Adoption (Jersey) Law 1961 and subsequent amendments. The law provides that only the Court can make an adoption order which transfers parental responsibility from a child's parents to adoptive parents. Prior to making an adoption order the Court would need to have regard to all the circumstances and its primary consideration would be to safeguard and promote the welfare of the child, whilst having regard to the child's wishes where the child's age and understanding allow for that.
2. The extension of the European Convention on the Adoption of Children 2008 to Jersey is currently under consideration by the Health and Social Services Department. In order for the obligations in that Convention to be extended some amendments would need to be made to the Adoption (Jersey) Law 1961. Those amendments would, as minimum, need to provide for greater access to information about an adopted person's origins and strengthen the existing mechanism for ascertaining the wishes of the child with respect to a proposed adoption.

H. Period review of placements (Article 25)

1. The Children (Jersey) Law 2002, the Children (Secure Accommodation) (Jersey) Order 2005 and the Criminal Justice (Young Offenders) (Jersey) Law 1994 all provide for periodic review of the treatment and circumstances of the child. The child's parents will be involved in that review meeting, except in exceptional circumstances.
2. If a child were to be detained in Jersey for treatment for a mental disorder, they would be managed in accordance with procedures that apply to Looked After Children with reviews held every three months in the first year and every six months thereafter (note: no child has been held in Jersey for over 28 days in the last 15 years).
3. In addition, the Mental Health (Jersey) Law 1969 allows for any person detained under the law for observation or treatment to make an appeal to the Mental Health Review Tribunal. In the case of a child who has insufficient mental capacity the application shall be made on their behalf by either the Health and Social Services Minister or the Attorney General.

I. Recovery of maintenance (Article 27.4)

1. Schedule 1 of the the Children (Jersey) Law 2002 provides the Court with the powers to secure financial support for the child from the parent/s or others with financial responsibility, this includes where the child lives in another jurisdiction.
2. The Maintenance Orders (Enforcement) (Jersey) Law 1999 make additional provision for the enforcement of maintenance orders made under the Matrimonial Causes (Jersey) Law 1949 and Children (Jersey) Law 2002.
3. Maintenance can be recovered from the parent/s or others with financial responsibility for the child who live in another jurisdiction through the United Nations Convention on the Recovery Abroad of Maintenance and the Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations. This Convention has been effective in Jersey since 2003.

J. Physical and psychological recovery and re-integration (Article 39)

1. The Health and Social Services Department, and associated children's social work service, provides for the physical and psychological recovery of children who have been victims of any form of abuse.
2. Jersey's specialist Child and Adolescent Mental Health Service (CAMHS) provides a range of interventions delivered by specialist children's psychologists and psychiatrists; multi-agency support teams operate in schools; the Youth Enquiry Service (YES) offers counseling support to young people aged 14 – 25 and a Pathway Plan is in place to support children who self-harm. A child who requires highly specialised support to manage emotional trauma may be provided with a placement in a specialist UK facility.
3. The physical health of Looked After Children is supported through a new multi-agency liaison group specifically established to help improve their health, a Paediatric Liaison Health Visitor together with a dedicated Nurse and Medical Adviser for Looked After Children.

CHAPTER 6: BASIC HEALTH AND WELFARE

A. Right to life, survival and development (Article 6)

1. The Human Rights (Jersey) Law 2000 gives effect in domestic law to rights and freedoms guaranteed under the European Convention on Human Rights, thus recognizing the right to life.
2. As set out in Chapter 1 above the Government of Jersey intends to enter the same declaration as the UK Government in that it “interprets the Convention as applicable only following a live birth”. (CRC/C/2/Rev.8, p.42.).
3. As set out below in Section D below the Government of Jersey works to support the survival and development of the child.

B. Childcare services and facilities (Article 18.3)

1. The Government of Jersey funds nursery care for 20 hours a week, 38 weeks of the year, for all children in the year before they reach compulsory school age. There is currently no statutory right to maternity, paternity or adoption leave in Jersey. There is however provision in the Social Security (Jersey) Law 1974 for maternity and adoption benefits, including up to 18 weeks maternity allowance.
2. The Social Security Department intends to introduce legislation relating to maternity, paternity and adoption leave, in tandem with sex discrimination legislation, in 2015. Pending approval by the Government of Jersey, family friendly rights will be introduced via amendment to the Employment (Jersey) Law 2003 and protection against sex discrimination would be introduced via Regulations made under the draft Discrimination (Jersey) Law 201- which was approved by the Government of Jersey in May 2013 and is awaiting Royal Assent.
3. The Jersey Advisory and Conciliation Service advises that whilst there is currently no statutory provision many employers do already give contractual rights to maternity and paternity leave. In part because many Jersey based companies reflect the employment policies of their UK head offices.

C. Disabled children (Article 23)

1. Children with a disability and/or complex needs receive targeted support from a range of services and organisations including, but not limited to: the paediatric health team; the multi-disciplinary child development service; the social work team for children with a disability; sensory needs services including for deaf and hard of hearing; respite services; third sector organisations including Jersey Mencap, Autism Jersey, Headway and the Youth Service’s Youth Inclusion Project.
2. The Health and Social Services Department are currently progressing 2 key areas of working including improvements in respite care provision for children with a special need and improvements in paediatric palliative care.
3. Article 4 and 28 of the Education (Jersey) Law 1999 place a duty on the Minister for Education, Sport and Culture to make available appropriate, free provision for all children with special educational need. This provision is further underpinned by the Department’s Special Educational Needs Code of Practice and Criteria for Assessment, both of which provide detailed guidance of the processes to be followed by the Educational Support Team and schools. These policies make further provision especially in respect parental rights and alternatives.

4. The legislation includes a preference that children who have special educational needs will be educated in a school which is not a special school, if the parent, or child if over 16 years, wishes and subject to compatibility criteria.
5. A Record of Need is issued for every child who has special educational needs requiring additional arrangements above and beyond what should be 'ordinarily available' within school to be put in place. There are approximately 311 children in Jersey with a Record of Need. Approximately 74 of these are placed in special educational settings, with the others receiving education in mainstream schools with additional support.
6. Children with special needs are supported by a dedicated Educational Psychology team.
7. The Department for Education, Sport and Culture currently compiles a register of all children in state schools from nursery age, who have defined and moderated inclusion needs. This register does not however currently capture children in private nurseries or of pre-nursery age. The Children's Policy Group recognise the need for comprehensive data about the number of children and young people with disabilities or special needs in Jersey, and work is currently being developed.
8. Children with disabilities can make their own Income Support claim when they reach school leaving age. This ensures that they can receive financial support in their own right, regardless of their parental circumstances.

D. Heath and health services (Article 24)

1. All children have access to healthcare in Jersey. Primary healthcare, which is provided by private practice GP's, is subsidised through the Social Security Department. Secondary healthcare, plus social services provision is provided free by the Health and Social Services Department. Families in receipt of income support and benefits receive a contribution towards the costs of accessing primary healthcare.
2. The Government of Jersey makes considerable investment in services to ensure the survival and development children. These are comparable to services elsewhere in the British Isles and include universal health services such as general practice, midwifery services, health visiting, and access to secondary care health services such as hospital, community pediatric services, children's social services, children's development centre and children and adolescent mental health services. There are a range of complimentary and integrated services for children which are provided for by the voluntary and community sector under contract to the Health and Social Services Department. A school dental service is provided for all primary school children and a Dental Fitness scheme provides support for dental costs for children aged 11 and above.
3. The Health and Social Services Department is currently redesigning existing services including those provided to children. The focus for this work is informed by the evidence and research in early intervention and providing the child with the right familial, social and community environment which will promote health and wellbeing. The programme of redesign will see less children with complex needs placed off island and more children being assessed as school ready as they enter their primary school reception class
4. Children with English as a second language are supported to access services through a translation service. In addition the Speech and Language Therapy Service fund bilingual co-workers to support assessment and provide programmes in a child's first language when this is their stronger language.

5. In Jersey the infant mortality rate is very low (3.6 per 1,000 live births) and primary immunisation levels are very high (95-98% of children)
6. All children in Jersey are provided, free of cost, with routine childhood immunisations as recommended by the UK Joint Committee on Vaccination and Immunisation. These include: diphtheria, tetanus, pertussis (whooping cough), polio, *Haemophilus influenzae* type B, pneumococcal disease, meningococcal disease, measles, mumps and rubella. Girls are also offered protection against cervical cancer caused by human papillomavirus types 16 and 18.
7. Teenage pregnancy rates for under 16's are much lower than in England and Wales (2.3 per 1,000 compared to 7.8 per 1,000) and the rate of under 18 conceptions is low in Jersey (16/1000) compared with UK (40/1000).
8. A specialist Child and Adolescent Mental Health Service (CAMHS) provides a range of services for children delivered by specialist children's psychologists and psychiatrists. Specialist interventions are in place for children with particular difficulties such as eating disorders or self-harming.
9. The education curriculum in schools provides children with information on health issues including nutrition, exercise, sexual health, smoking, alcohol and drugs.
10. In March 2010, the States of Jersey voted in favour of introducing new legislation making it a requirement for all under 18 year olds to wear cycle helmets. This legislation is currently being drafted; it will apply to children under 14 years old when cycling or riding on a public road. In addition existing road traffic legislation, the Road Traffic (Jersey) Law 1956 and the Motor Vehicles (Wearing of Seat Belts by Children) (Jersey) Order 1998, makes the use of seat belts or appropriate restraints compulsory for all children below the age of 14 travelling in the front or back seats of a car, small goods vehicle or minibus and legislation is being developed to make use of appropriate child seats and restraints compulsory for specific heights and weights of children under 12.
11. The multi-agency Child Accident Prevention group has developed an Island-wide accident prevention strategy and undertakes awareness campaigns and works with schools to help increase children's knowledge and awareness of risk.
12. Protection is given in law against traditional practices that harm children, for example female circumcision, which are deemed grave and criminal assaults.

E. Social Security and standards of living (Article 26 and 27)

1. The Social Security Department provides, in accordance with legislation, a range of benefits that support children and young people.
 - a) A Maternity Allowance is available for up to 18 weeks to support mothers to have time off work whilst they have their baby. The current full allowance is £187 per week, but the amount paid does vary depending on the amount of social security contribution the mother has paid. The allowance can be paid for up to 18 weeks (6 weeks before the baby is born, the week of the birth and 11 weeks after birth).
 - b) A one-off Maternity Grant or a one off adoptive parent grant of £561.75 is available to families, who have paid social security contributions, to help with the costs of having a baby.

- c) A Home Responsibility Protection scheme provides contribution credits for a carer who stays at home to look after their child. These credits protect the carer's social security contribution record and goes towards their pension. Credits are usually available to carers aged 18 or over, who stay at home to look after a child under 5 years who lives with them.
 - d) Income Support is available to people over school leaving age (either directly or as part of their parents' claim) and who satisfy income and residency conditions. It includes a number of components and/or eligibility criteria that impact on children and young people, both as claimants or as children supported by claimants, such as:
 - i) the prime carers of children aged under 5 are exempt from work and are eligible to receive income support if they choose to stay at home to look after their child.
 - ii) prime carers who are in employment, or are in some limited forms of education and training, can receive a higher rate of income support which takes account of their childcare costs.
 - iii) support for living and rental costs for adults aged under 25 if they are responsible for, and living with, a child. This helps ensure that young parents can live independently.
 - iv) medical costs are covered by three different income support components. The clinical cost competent helps with the cost of GP visits, whilst the personal care and mobility components provide additional financial support to those with long-term medical conditions and disabilities.
 - e) Whilst eligible young people aged under 25 years can claim income support for day-to-day expenses, most are not entitled to the accommodation component which makes a contribution towards the cost of rent. The cost of rent may however be included for: a child who is responsible for and living with a child; a care leaver or young adults who are unable to remain in the family home.
2. The Government of Jersey's Housing Department and local housing trusts provide social rented accommodation for families who are unable to afford to rent or buy on the open housing market. Under the Reform of Social Housing Proposition approved by the Government of Jersey in April 2013 all social housing will be brought up to standards equivalent to the UK's Decent Homes Standard.
 3. The Control of Housing and Work (Jersey) Law 2012 puts in place a number of controls that are a proportionate and legitimate response to the Island's housing needs, these include the requirement in a small island with limited housing stock to protect a proportion of housing for long established residents whilst also ensuring that housing is also available for newly arrived migrants. The Control of Housing and Work (Jersey) Law 2012 is Human Rights compliant.
 4. The Department for Education, Sport and Culture provides some financial assistance for children from low income families through a contribution for secondary school pupils toward the cost of school uniforms and extracurricular activities such as school trips, and through introducing relevant charities to school leaders who actively support primary pupils in this area. This activity is facilitated through the Department's Education Welfare Officer attached to each school, who also liaise with other government departments, including the Health and Social Services Department and Social Security's Income Support Team, to arrange financial assistance for the purchase of glasses for children from disadvantaged backgrounds.

CHAPTER 7: EDUCATION, LEISURE AND CULTURAL ACTIVITIES

D. Right to education; accessibility of education (Article 28)

1. Jersey has a unique education system that comprises 43 primary, secondary and specialist schools. Some are private, some States fee paying and some non-fee paying States schools. A very small number of families educate their children at home, monitored by the Education Support Team.
2. The Education (Jersey) Law 1999 makes full time education compulsory for all children from the first day of the academic year in which their fifth birthday falls until 30th June in the school year in which their 16th birthday falls. Under this law the Department for Education, Sport and Culture provides free primary and secondary education to all pupils who attend non-fee paying State schools.
3. The Department for Education, Sport and Culture also funds nursery care for 20 hours a week, 38 weeks of the year, for all children in the year before they reach compulsory school age. Home tutoring support is provided for parents/guardians who wish to educate their children at home, plus vocational education/training opportunities are available.
4. There are approximately 12,000 pupils in compulsory education in Jersey and approximately 1,000 in education aged 16 and over. There are 909 children in funded nursery places, provided with 20 hours of high quality Nursery education in the year prior to moving in to school.
5. Pupils over 16 years may either leave education; remain within the school system in order to study for A-levels or the International Baccalaureate or attend Highlands College of Further Education and access a wide range of qualifications from entry level up to degree level.
6. Students are supported in further education up to the age of 19 through the provision of free tertiary education, Jersey operates a Discretionary Grant system for students undertaking courses in higher education whether locally or off-Island. The Government of Jersey will make a contribution to the cost of tuition and living costs; the size of the contribution is means-tested using the income of the parents or the student.
7. The Education (Jersey) Law 1999 determines that the Jersey curriculum must recognise the differing requirements of children. To this end the Department for Education, Sport and Culture carries out consultation on the aims objectives, content and delivery of the curriculum plus the processes used to assess educational achievement.
8. The Jersey curriculum makes provision for vocational education and training and a Careers Service is provided by the Department for Education, Sport and Culture. Vocational training provision includes a range of courses at Highlands College and Trackers, the new apprenticeship programme.
9. The Law requires that children with special educational needs are supported. Depending on the needs of the child that free support can take the form of:
 - a) a place in a specialist school for a child with severe learning difficulties, and emotional and behavioural difficulties
 - b) specialist education support and provision in a mainstream school, including provision to meet physical, hearing, language and social communication needs;
 - c) an Alternative Curriculum for Year 11 students who have not accessed Year 10 successfully.

10. The Department for Education, Sport and Culture provides English as an additional language service to all children who require English language support.
11. School attendance in Jersey is high with an attendance rate of 95.4% in primary schools and 92.8% in secondary schools. Unauthorised absence levels are lower than other comparable jurisdictions (0.26% in primary schools and 0.97% in secondary schools) as are school suspensions. There have been no permanent exclusions in Jersey for several years.
12. Attendance is supported by the Education Welfare Service (EWS) of the Department for Education, Sport and Culture. Primary schools have designated Education Welfare Officers (EWOs) in a cluster arrangement; secondary schools each have an assigned Attendance Officer. These officers provide support should truancy issues arise.
13. By way of an Act issued by the Government of Jersey Education Committee in 1986, the use of corporal punishment by teachers in all States schools and private schools in Jersey is prohibited. Secondary schools have nominated staff who act as lead behaviour managers promoting and supporting positive behaviour amongst pupils.

E. Aims of Education (Article 29)

1. The Education (Jersey) Law 1999 sets out requirements related to the curriculum taught in Jersey schools. This includes the skills and process which must be taught to children of different abilities and the arrangements that must be made for assessing educational attainment, in order to ensure, as far as is possible, that children reach their fullest potential.
2. At both primary and secondary level the Jersey curriculum includes Personal, Health and Social Education (PHSE) which equips children and young people with the knowledge and skills required to deal with a range of issues they may face as they grow up and to prepare them for a responsible life in a free society. This includes citizenship; equality; diversity; sex; drugs; nutrition; health; careers etc.
3. PHSE education is reinforced through informal education via government funded youth services, the youth work curriculum and the Youth Enquiry Service which offers free and confidential information, advice and counselling support to young people aged 14 – 25.
4. Children are supported to prepare for employment via a school's based careers advice service; a work experience scheme plus a range of work shadowing schemes. The Prince's Trust and the Youth Service personal development programme to support children may not have achieved at school.
5. The Jersey Skills Board aims to ensure that the Island's population has a diverse mix of skills including children and young people. Activities include work experience, internships, work training and a personal mentor and undergraduate internships.
6. School children are provided with careers advice and guidance. This includes school careers sessions for 14 – 18 year olds; the work experience scheme for 15 - 16 year olds and opportunities for final year pupils to participate in schemes such as Young Enterprise, the Institute of Directors and the Chartered Institute of Marketing work shadowing schemes.

F. Leisure and cultural activities (article 31)

1. Children and young people are provided opportunities to develop as citizens via a number of initiatives including visits to and debates within the Government Chamber; organised community activities such as Scouting, Brownies and Guides and via Youth Service activities such as the Duke of Edinburgh's Awards and a Youth Bank scheme which enables

12-18 year olds to agree grant funding to youth projects and youth centre participation projects.

2. Respect for the natural environment is fostered via the curriculum and via other government and non-government agencies including, but not limited to, a Forest School initiative in Jersey schools, National Trust for Jersey, Jersey Heritage and Eco-active a government led initiative designed to support environmental initiatives.
3. Participation in the arts is supported via a dedicated Cultural Development Officer who works with local arts and cultural trusts in providing Youth Theatre, student tickets for events, young artist competitions and theatre workshops. Jersey Heritage offer Flash Days and in and out of school activities for children. The Jersey Instrumental Music Service provides school children with access to musical instruments.
4. Early Years and Childcare Partnership is developing a Play Strategy for Jersey. This is due to be launched in September 2013, and builds on the work of dedicated play workers in a range of settings.
5. Jèrriais, the native language of Jersey is available for children to study up to GCSE standard.
6. The Education (Jersey) Law 1999 sets out the curriculum for physical education in schools as a compulsory subject up to the age of 16 years. This provides for a minimum of 2 hours per week of high quality PE. Schools offer a range of out of hours and after-school provision in a variety of sports. This is co-ordinated by the Jersey Schools Sports Association, which is part-funded by the Department for Education, Sport and Culture. Holiday and after-school programmes also offering a range of sporting activities are provided by many clubs and associations as well as by the Education, Sport and Culture Department. Some of these are targeted at children and young people from low income families. These are provided at little or no cost to families.
7. ESC further supports sport and leisure access for children through a team of sports development officers working across a wide range of facilities.
8. Jersey has a strong, well-funded Youth Service which runs a range of projects in clubs and street-based services, as well as mobile units servicing localities without established settings. The Youth Service provision is available to all young people from the age of 11-18. Small contributions support this work, but there is no financial bar to children's access.

CHAPTER 8: SPECIAL PROTECTION MEASURES

A. Refugee children (Article 22)

1. There have been no incidents of children entering Jersey to seek refuge or asylum.
2. Entry into Jersey is via the UK common travel area or via other EU states. The UK Immigration Act and the provisions of the Dublin Convention allow all EU states to be treated as safe third countries, therefore in the event that a child did enter Jersey they would be returned to the safe third country from which they came.
3. Whilst in Jersey, the Jersey Immigration service would safeguard that child by adhering to UK Borders and Immigration Agency guidance and, if required, by placing that child in the care of Children's Social Services. Under the Children (Jersey) Act 2002 provision would be made to safeguard the welfare of that child.

B. Right to enjoy own culture (Article 30)

1. The Human Rights (Jersey) Law 2002 provides for rights and freedoms to be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This includes freedom of thought, conscience, expression and religion.
2. The 2011 census showed that the currently 50% of Jersey residents were born in Jersey. Nearly a third (31%) were born in the British Isles (including England, Scotland, Wales, Northern Ireland and other Channel Islands). About one in fourteen (7%) were born in Portugal / Madeira and 3% were born in Poland. The Portuguese and Polish communities have a notable cultural identity on the Island which includes events such as an annual Portuguese Food Fair. The cultural identity is embraced and supported by the Government of Jersey.
3. There are state funded initiatives to promote Jèrriais the native language of Jersey and other minority languages in schools.

C. Economic exploitation (Article 32)

1. Interference with a child's education is legislated against in the Education (Jersey) Law 1999 which requires a child to attend full time education from the first day of the academic year in which their fifth birthday falls until the 30th June in the school year in which their 16th birthday falls.
2. The Children (Regulation of Employment) (Jersey) Order 2011, which is made under the Children (Jersey) Law 2002, currently places restrictions on the employment of children who are under the school leaving age and imposes sanctions on employers who do not accord with those restrictions. It is the intention of the Health and Social Services Minister to bring forward an updated Order to extend regulation to children aged 16 -18 during 2016.
3. The Shipping (Employment of Young People) (Jersey) Order 2007 permits the employment of children on boats in local inshore waters in exceptional circumstances and under strict conditions. It is believed that the Order provides adequate protection against placing a child in a hazardous and harmful place. Nevertheless, it is the intention of the Minister for Economic Development to review this Order and its practical

application during 2016 alongside the Children (Regulation of Employment) (Jersey) Order 2011.

4. The Health and Safety at Work (Jersey) Law 1989 applies to all workers, irrespective of age. In particular employers have a duty to conduct their undertakings in a manner, as far as is practicably possible, that ensures the health, safety and welfare of their employees.
5. Employment law provides for minimum wage for all employees above school leaving age. Trainee minimum wage (at a lower rate) is available at any age but provides for structured training as part of employment for a maximum of two years.

D. Drug abuse (Article 33)

1. Restriction on Smoking (Sales of Cigarettes to Children (Jersey) Regulations 1992 prohibit the sale of cigarettes to persons under the age of 18 in Jersey. Additional regulations approved by the Government of Jersey in April 2013 will, when they come into effect, ban the sale of tobacco from vending machines and place restrictions on tobacco advertising, promotion and display.
2. The Licensing (Jersey) Law 1974 places restrictions on the serving of alcohol to people under the age of 18.
3. Misuse of Drugs (Jersey) Law 1978 defines controlled substances, including narcotic drugs and psychotropic substances, putting in place restrictions and penalties which are broadly similar to UK legislation. Drug Trafficking Regulations similarly provide protection for children.
4. The school curriculum provides that children receive education in this area and there are government funded services available to help families where alcohol or substance misuse is an issue.
5. The Misuse of Drugs (Jersey) Law 1978 provides protection for children from involvement with trafficking of drugs

E. Exploitation, sale trafficking and abduction (Article 34, 35 and 36)

1. The Geneva Conventions Act (Jersey) Order 1999 gives effect to the provisions within the Geneva Conventions including Article 77 which provides for the protection of children, including protection against any form of indecent assault.
2. The Children (Jersey) Law 2002 adoption legislation and Criminal Law (Child Abduction) (Jersey) Law 2005 prohibits such conduct. Protection against slavery or enforced labour is also provided through extension of ratification of the International Covenant on Civil and Political Rights.
3. Sexual Offences (Jersey) Law 2007 protects children from a range of sexual offences including sexual intercourse below the age of sexual consent (age 16 for heterosexual and homosexual activity), grooming, abuse of position of trust, incitement and causing a child to watch a sexual act. The law sets out terms for custodial sentences for these crimes.
4. The Protection of Children (Jersey) Law 1994 prohibits the taking or making of indecent photographs or pseudo-photographs of children and puts in place penalties for the

possession, distribution, showing and advertisement of such indecent photographs or pseudo-photographs including computer generated images

5. The States of Jersey Police and the Department for Education, Sport and Culture work with the UK's Child Exploitation On-Line Protection Centre (CEOPS) which is dedicated to eradicating on-line abuse of children. This includes the provision of a dedicated E-safety Officer in the Department for Education, Sport and Culture working to protect children within the school environment plus the provision of e-safety awareness for retailers, parents, carers and professionals working with children.
6. The Children (Jersey) Law 2002 places restrictions on children taking part in some forms of public performances in order to protect the child.

F. Children deprived of their liberty (Article 37.b.c.d)

1. The Criminal Justice (Young Offenders) (Jersey) Law 1994 establishes that the minimum age of criminal responsibility is 10 years, as it also is in England and Wales. The Children's Policy Group notes however that the UNCRC Committee does not consider a minimum age below 12 years to be acceptable and will be considering during 2016 whether to raise the criminal age of responsibility to 12 years.
2. Jersey Law provides significant safeguards around the arrest, detention and imprisonment of a child. Under the Criminal Justice (Young Offenders) (Jersey) Law 1994 a court cannot impose a sentence of imprisonment or Borstal training on a person under aged 21, nor can a Court impose a youth detention sentence on a child under the age of 15 except where the offence is a grave crime, which if committed by an adult would carry a penalty of 14 years or more, or the offence is so serious that no other sentence could be imposed or if previous community penalties have failed.
3. The Children (Jersey) Law 2002 provides safeguards for children placed in the secure welfare unit. A child can only be placed in the unit if they have a history of absconding and are likely to suffer significant harm if they abscond or if they are likely to injure himself or herself or other persons. The Children (Secure Accommodation) (Jersey) Order 2005 sets out maximum periods for which a child can be placed in the secure unit and associated procedures for review.
4. Island provision currently consists of a secure welfare unit managed by the Health and Social Services Department; a young offenders institution (YOI) which caters for male young offenders from 15 years up to the age of 21 years and HMP La Moye which caters for female young offenders and male and female adults.
5. Children under school leaving age are remanded in custody to a secure welfare unit run by the Health and Social Services Department. Male children over school leaving age are remanded to the YOI and male children over the age of 15 who are convicted are detained in the YOI. Female children over school leaving age are remanded to the HMP La Moye adult female wing, and female children over the age of 15 years who are convicted are detained in the HMP La Moye adult female wing. School leaving age is the 30th June in the school year in which a child's 16th birthday falls.
6. As a small island community with very low numbers of children deprived of their liberty through remand or custodial sentence (0 in 2013 to date; 4 in 2012), Jersey has to strike a balance between the need to provide social and family contact and avoid isolation plus the need to avoid transfer off-island to another jurisdiction, against the inevitable restricted access to suitable accommodation. As a result in some circumstances children, invariably females, who have been sentenced or who are on remand are held with adult prisoners.

7. Article 37c states that every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest. Where a child is not separated from adults in Jersey, this will be in the best interests of the child as it is deemed preferable to mix children with adult prisoners, with appropriate safeguards in place, rather than place a child in prolonged social isolation or transfer them off-island.

Changes to the Criminal Justice (Young Offenders) (Jersey) Law 1994 are currently being developed for consideration by the States of Jersey. These changes would allow a person who has attained the age of 15 but who is not 18 to serve either a custodial sentence or a period on remand at either the Greenfields Secure Unit or the YOI at HMP La Moye. Whilst the legislation maintains strict criteria before a child can be sentenced to custody, it also creates a Young Persons Placement Panel which will determine the most appropriate facility in which that child should be accommodated. This extra flexibility, based around meeting the best interests of the child, is the main thrust of the redrafted law. Where that person attains the age of 18 in custody there will be provision for them to either remain in secure accommodation or transfer to the YOI following consultation between the Prison Governor and the Young Persons Placement Panel.

8. Similarly where a child is deprived of their liberty on the grounds of mental health, it is also a practical reality that on a small island there is only every likely to be a single child requiring accommodation at any one time and, due to the consequential problems associated with isolation, it is the case that it may be in the best of interests of the child to mix them with adults.
9. All children deprived of their liberty by the criminal justice system, or for their own protection, have the right to prompt access to legal and social work assistance and legislation ensures that they have to be produced before a court at the first available opportunity. Children deprived of their own liberty for their own protection and placed in secure accommodation are safeguarded in a similar fashion.

G. Children in armed conflict, including physical and psychological recovery (Article 38 and 39)

1. The UK Government is constitutionally responsible for the defence of Jersey as a Crown Dependency. Jersey has no armed forces although it does fund a Territorial Army Royal Engineers Squadron on the Island. This is done in accordance with UK legislation and international humanitarian laws related to the involvement of children in armed conflict.
2. As set out in Chapter 5 above the Health and Social Services Department provides for the physical and psychological recovery of children who have been victims of any form of abuse, including through a children's social work service and a Child and Adolescent Mental Health Service.

H. Administration of juvenile court (Article 40)

1. The Criminal Justice (Young Offenders) (Jersey) Law 1994 establishes that the minimum age of criminal responsibility is 10 years, as it also is in England and Wales. The Children's Policy Group notes however that the UNCRC Committee does not consider a minimum age below 12 years to be acceptable and will be considering during 2016 whether to raise the age of criminal responsibility to 12 years.

2. Jersey law provides significant safeguards around the arrest, detention and imprisonment of a child. Under the Criminal Justice (Young Offenders) (Jersey) Law 1994 a court cannot impose a sentence of imprisonment or Borstal training on a person under aged 21, nor can a Court impose a youth detention sentence on a child under the age of 15 except where the offence is a grave crime, which if committed by an adult would carry a penalty of 14 years or more, or the offence is so serious that no other sentence could be imposed or if previous community penalties have failed.
3. Under Jersey law there is a presumption of innocence and no person can be prosecuted for acts which were not illegal at the time they were committed
4. Charges are read to children and their parents or legal guardians and a copy provided in writing, in accordance with the provisions made in law. Children and their parents have access to legal advice regarding their offence. There is a statutory requirement to do this in a language and manner which is understood. Interpreters are provided at no charge at Court and during any associated proceedings.
5. There is a specialist Youth Court similar to that in England and Wales which hears cases against children. Children who are co-charged with adults may have their case heard in the adult courts.
6. The Youth Court is only open to the parties concerned, their legal representatives and guardians. If co-accused with an adult the Court has the discretion to clear the public gallery. The media are present but photography, video or audio recording is forbidden and children may not be named by the media.
7. There is no compulsion to give evidence or confess guilt. Children have an Advocate who acts for them, who can cross-examine witnesses and ask questions of defence witnesses.
8. There is an appeal process through the Jersey courts and ultimately through the UK Privy Council.
9. Jersey has a range of alternatives to judicial proceedings which can be used to divert children from the formal criminal justice process including:

- a. Parish Hall Enquiries (PHEs) are a customary, informal alternative to the Courts which date back over 800 years. A child, who has committed an offence which does not require them to be detained in custody, can be required to attend a PHE in the parish in which they have committed the offence. The PHE, which is overseen by the Centenier (honorary police officer), is a participatory forum and allows for the child and parent's voice to be heard. The Centenier can determine an appropriate penalty for example, referral to the Court; placement under a voluntary supervision order with the Probation Service; attendance on victim awareness programmes; employment and training support; bereavement counselling or a restorative justice alternative.

The overwhelming majority of offences committed by children are dealt within a PHE. Resolution at a PHE diverts children from the Court system, helps avoid criminal convictions being recorded against them and supports reductions in reoffending. Jersey's PHEs have attracted the interest of criminologists internationally who recognize the benefits of this system.

- b. The Youth Courts also made use of restorative justice alternatives as a non-punitive measure where there is an identifiable victim either face-to-face contact, indirect contact through letters of apology or through another form of reparation.

CHAPTER 9: OPTIONAL PROTOCOLS

Optional Protocol 1: The sale of children, child prostitution and child pornography

~~The sale of children, child prostitution and child pornography are prohibited by domestic law in Jersey. The Government of Jersey is absolutely committed to ensuring that all children are similarly protected and therefore supports the UK ratification of Optional Protocol 1 and wishes that ratification to be extended to itself.~~

~~The Government of Jersey recognises the need to assess the extent to which it is fully compliant with the provision of the Optional Protocol, particularly in relation to mechanisms for international co-operation.~~

UPDATED TEXT SUBMITTED TO THE UK ON 22 JANUARY 2014.

The Government of Jersey wishes to protect against the sale of children, child prostitution and child pornography. It supports the UK ratification of Optional Protocol 1 and wishes that ratification to be extended to itself. In so doing, the Government of Jersey commits to reviewing its own legislation to assess the extent to which it is fully compliant with the provisions of the Optional Protocol, and where it is not found not to be fully compliant, to consider what action is required to ensure compliance.

Optional Protocol 2: The involvement of children in armed conflict

The UK Government is constitutionally responsible for the defence of Jersey as a Crown Dependency. Jersey has no armed forces although it does fund a Territorial Army Royal Engineers Squadron on the Island. The Government of Jersey fully endorses the UK Government's commitment to taking all feasible measures to ensure that under 18s do not take a direct part in hostilities; including wherever practical that under 18s are withdrawn from their units before deployment. The Government of Jersey also recognises that safeguards are in place to ensure that the recruitment of under 18s is genuinely voluntary and with the informed consent of the volunteer and his/her parents or guardians.

Annex 1 statistical information

Key facts

Area: 116 sq km

Population: 97,857: 2011 census (87,186: 2001 census)

Location: Jersey sits in the Bay of St. Malo, 14 miles from France.

Working age (2011 census)

64,353 people were of working age (defined as 16 to 64 inclusive for men, and 16 to 59 inclusive for women); 56,890 were in employment in Jersey

	Males	Females	All
Under 16 yrs	8,227	7,986	16,213
Working age	33,636	30,717	64,353
Above working age*	6,433	10,858	17,291
Total	48,296	49,561	97,857
Percentage at working age	70%	62%	66%

Place of birth (2011 census)

- Half of Jersey's resident population were born in Jersey.
- 7,030 (7%) were born in Portugal or Madeira.
- 3,130 (3%) were born in Poland.
- 3,790 (4%) were born outside of Europe.
- Since 2001, there has been a net migration of:
 - 3,500 British-born persons *into* the Island
 - 3,100 Polish-born persons *into* the Island
 - 1,900 Portuguese-born persons *into* the Island
 - 4,100 Jersey-born persons *out of* the Island.

Numbers of children receiving full time education Jersey (as at January 2013)

<u>Pupils in States primary schools</u> Non-fee paying and 'provided' schools	5,683
<u>Pupils in private primary schools</u>	1,294
<u>Pupils in States secondary schools</u> Non-fee paying and 'provided' schools	4,996
<u>Pupils in private secondary schools</u>	1,163
Total: primary and secondary	13,225 (difference relates to number of children in special needs facilities)
Pupils in higher education in Jersey aged 16-19 years	967

School leavers (2011)

Post-16	<ul style="list-style-type: none"> 89% of the cohort remained in full time education (36% attended Highlands College, Jersey's further education college)
Sixth form	<ul style="list-style-type: none"> 76% of students completing sixth form moved on to a higher education course either locally or elsewhere 9% moved into employment with a further 13% still seeking work in mid-September
Highlands College leavers	<ul style="list-style-type: none"> 17% moved into employment with a further 17% still seeking employment in mid-September Almost one third continued on to another course at Highlands College 26% progressed to a higher education course with more than half opting to study locally
Higher Education	<ul style="list-style-type: none"> 513 students started a course in higher education bringing the total undergraduate student number to 1,349 The most popular institution was Highlands College, followed by Durham, Brighton, Plymouth, Cardiff, Exeter and Sussex universities The top five subject areas were Humanities (including English & History), Creative Arts, Science, Social Sciences (including Psychology) and Business

Youth crime

	2008	2009	2010	2011	2012
Cases presented to Youth Court	327	344	253	179	71
New probation orders imposed by Youth Court	40	56	35	29	22
New Community service orders imposed by Youth Court	13	16	20	9	5
Offences committed by children and young people detected	Figure not available	664	522	343	211

Male & Female Juveniles (aged 15-17yrs inc) in custody in HMP La Moye

		Individuals Admitted	Number of Admissions
2009	Male Juveniles	13	15
	Female Juveniles	3	5
2010	Male Juveniles	18	31
	Female Juveniles	2	10
2011	Male Juveniles	9	14
	Female Juveniles	1	4
2012	Male Juveniles	2	2
	Female Juveniles	2	4
2013	Male Juveniles	0	0

	Female Juveniles	0	0
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Looked after children

Numbers of Looked After Children in Jersey	83 in 2012
Looked After Children adoption rates	Between 2005 – 2012, 7.9% of Looked after Children have been adopted.
Looked After Children placement summary (as at March 2013)	c 45% in foster care c 26% with family and friends' carers c 19% in residential children's homes or other settings (including secure accommodation or residential schools or other placements outside Jersey).
Numbers of Children on Child Protection Register	Average number of children on the Child Protection Register per month during 2012: 58

Children's households

Household Income Average	Average household income for a couple with at least one child aged under 16 = £1,145 per week. For a lone parent = £613 per week Average for all Jersey households = £860 per week
Relative low income households	In 2002 33% of all children in Jersey lived in relative low income households. By 2009 this proportion had fallen to 24%.
	Jersey has the highest percentage of economically active women in the world (82%). It also has a high proportion of working mothers, 75% of women with children under the age of 16 are in employment, compared to 68% in the UK.

Addenda

Key strategic documents to accompany the report

Children and Young People's Strategic Framework

<http://www.gov.je/SiteCollectionDocuments/Health%20and%20wellbeing/R%20Children%20and%20Young%20People%20Strategic%20Framework%20Consultation%2020101215%20MC.pdf>

Legislation to accompany the report

Adoption (Jersey) Law 1961

http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.050_AdoptionLaw1961_RevisedEdition_1January2013.pdf

Adoption (Jersey) Rules 1962

http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.050.50_AdoptionRules1962_RevisedEdition_1January2013.pdf

Age of Majority (Jersey) Law 1999

http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.150_AgeofMajorityLaw1999_RevisedEdition_1January2006.pdf

Child Abduction and Custody (Jersey) Law 2005

http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.170.70_ChildAbductionandCustodyRules2005_RevisedEdition_1January2006.pdf

Children (Contact in Care) (Jersey) Regulations 2005

[http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200.20_Children\(ContactinCare\)Regulations2005_RevisedEdition_1January2006.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200.20_Children(ContactinCare)Regulations2005_RevisedEdition_1January2006.pdf)

Children (Jersey) Law 2002

http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200_ChildrenLaw2002_RevisedEdition_1January2013.pdf

Children (Regulation of Employment) (Jersey) Order 2011

[http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200.65_Children\(RegulationofEmployment\)Order2011_RevisedEdition_1January2012.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200.65_Children(RegulationofEmployment)Order2011_RevisedEdition_1January2012.pdf)

Children (Secure Accommodation) (Jersey) Order 2005

[http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200.80_Children\(SecureAccommodation\)Order2005_RevisedEdition_1January2006.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200.80_Children(SecureAccommodation)Order2005_RevisedEdition_1January2006.pdf)

Children (Voluntary Homes) (Jersey) Order 2005

[http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200.90_Children\(VoluntaryHomes\)Order2005_RevisedEdition_1January2006.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.200.90_Children(VoluntaryHomes)Order2005_RevisedEdition_1January2006.pdf)

Consent to Medical Treatment (Jersey) Law 1973

http://www.jerseylaw.je/law/lawsinforce/consolidated/20/20.050_ConsecttoMedicalTreatmentLaw1973_RevisedEdition_31August2004.pdf

Control of Housing and Work (Jersey) Law 2012

<http://www.jerseylaw.je/law/lawsinforce/htm/LawFiles/2012/L-31-2012.pdf>

Criminal Justice (Evidence of Children) (Jersey) Law 2002

[http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.250_CriminalJustice\(EvidenceofChildren\)Law2002_RevisedEdition_1January2007.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.250_CriminalJustice(EvidenceofChildren)Law2002_RevisedEdition_1January2007.pdf)

Criminal Justice (Young Offenders) (Jersey) Law 1994

http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.380_CrimJusticeYoungOffendersLaw1994_RevisedEdition_1January2006_reissuedApril2011.pdf

Criminal Law (Child Abduction) (Jersey) Law 2005

[http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.405_CriminalLaw\(ChildAbduction\)Law2005_RevisedEdition_1January2006.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.405_CriminalLaw(ChildAbduction)Law2005_RevisedEdition_1January2006.pdf)

Day Care of Children (Jersey) Law 2002

http://www.jerseylaw.je/law/lawsinforce/consolidated/10/10.700_DayCareofChildrenLaw2002_RevisedEdition_1January2006.pdf

Discrimination (Jersey) Law 201-, (awaiting Royal Assent)

Education (Jersey) Law 1999

http://www.jerseylaw.je/law/lawsinforce/consolidated/10/10.800_EducationLaw1999_RevisedEdition_1January2007.pdf

Geneva Conventions Act (Jersey) Order 1999

http://www.jerseylaw.je/law/lawsinforce/consolidated/17/17.385_Appendix_GenevaConventionsActOrder1999.pdf

Health and Safety at Work (Jersey) Law 1989

http://www.jerseylaw.je/law/lawsinforce/consolidated/05/05.300_HealthandSafetyatWorkLaw1989_RevisedEdition_1January2013.pdf

Human Rights (Jersey) Law 2000

http://www.jerseylaw.je/law/lawsinforce/consolidated/15/15.350_HumanRightsLaw2000_RevisedEdition_1January2007.pdf

Immigration Order (Jersey) 1993

http://www.jerseylaw.je/law/lawsinforce/consolidated/21/21.700_Appendix_ImmigrationOrder1993.pdf

Licensing (Jersey) Law 1974

http://www.jerseylaw.je/law/lawsinforce/consolidated/11/11.450_LicensingLaw1974_RevisedEdition_1January2013.pdf

Maintenance Orders (Enforcement) (Jersey) Law 1999

[http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.500_MaintenanceOrders\(Enforcement\)Law1999_RevisedEdition_1January2013.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.500_MaintenanceOrders(Enforcement)Law1999_RevisedEdition_1January2013.pdf)

Marriage and Civil Status (Jersey) Law 2001

http://www.jerseylaw.je/law/lawsinforce/consolidated/12/12.600_MarriageandCivilStatusLaw2001_RevisedEdition_1January2013.pdf

Mental Health (Jersey) Law 1969 revision came into effect on 1 January 2013

http://www.jerseylaw.je/law/lawsinforce/consolidated/20/20.650_MentalHealthLaw1969_RevisedEdition_1January2013.pdf

Misuse of Drugs (Jersey) Law 1978

http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.680_MisuseOfDrugsLaw1978_RevisedEdition_1January2013.pdf

Nursing Agencies (Jersey) Law 1978

http://www.jerseylaw.je/law/lawsinforce/consolidated/20/20.700_NursingAgenciesLaw1978_RevisedEdition_1January2006.pdf

Nursing and Residential Homes (Jersey) Law 1994

http://www.jerseylaw.je/law/lawsinforce/consolidated/20/20.725_Nursing&ResidentialHomesLaw1994_RevisedEdition_1January2013.pdf

Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004

[http://www.jerseylaw.je/law/lawsinforce/consolidated/23/23.750.20_PPCE\(CodesofPractice\)Order2004_RevisedEdition_1January2009.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/23/23.750.20_PPCE(CodesofPractice)Order2004_RevisedEdition_1January2009.pdf)

Protection of Children (Jersey) Law 1994

http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.790_ProtectionofChildrenLaw1994_RevisedEdition_1January2013.pdf

Public Elections (Jersey) Law 2002

[http://www.jerseylaw.je/law/lawsinforce/consolidated/16/16.600_PublicElections\(Jersey\)Law2002_RevisedEdition_1January2012.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/16/16.600_PublicElections(Jersey)Law2002_RevisedEdition_1January2012.pdf)

Rehabilitation of Offenders (Jersey) Regulations 2002

[http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.840.50_RehabilitationofOffenders\(Exceptions\)Regs2002_RevisedEdition_1January2013.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.840.50_RehabilitationofOffenders(Exceptions)Regs2002_RevisedEdition_1January2013.pdf)

Restriction on Smoking (Sales of Cigarettes to Children (Jersey) Regulations 1992

[http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f20%2f20.825.60_RestrictiononSmoking\(SalesofCigarettestoChildren\)Regs.1992_RevisedEdition_1January2007.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f20%2f20.825.60_RestrictiononSmoking(SalesofCigarettestoChildren)Regs.1992_RevisedEdition_1January2007.htm)

Sexual Offences (Jersey) Law 2007

http://www.jerseylaw.je/law/lawsinforce/consolidated/08/08.860_SexualOffencesLaw2007_RevisedEdition_1January2008.pdf

Shipping (Employment of Young People) (Jersey) Order 2007

[http://www.jerseylaw.je/law/lawsinforce/consolidated/19/19.885.15_Shipping\(EmploymentofYoungPeople\)Order2007_RevisedEdition_1January2013.pdf](http://www.jerseylaw.je/law/lawsinforce/consolidated/19/19.885.15_Shipping(EmploymentofYoungPeople)Order2007_RevisedEdition_1January2013.pdf)

Social Security (Jersey) Law 1974

http://www.jerseylaw.je/law/lawsinforce/consolidated/26/26.900_SocialSecurityLaw1974_RevisedEdition_1January2013.pdf

Termination of Pregnancy (Jersey) Law 1997

http://www.jerseylaw.je/law/lawsinforce/consolidated/20/20.925_TerminationofPregnancyLaw1997_RevisedEdition_1January2006.pdf

Torture (Jersey) Law 1990

http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f17%2f17.875_TortureLaw1990_RevisedEdition_31August2004.htm

Wills and Successions (Jersey) Law 1993 (March 2010)

http://www.jerseylaw.je/law/lawsinforce/consolidated/04/04.960_WillsandSuccessionsLaw1993_RevisedEdition_1January2013.pdf

APPENDIX 2

Collated findings, all findings.

Disability, Basic Health and Welfare

At paragraph 82:

Article 6

- a) The right to development is not recognised in legislation.
- b) SoJ does not have framework legislation to protect the environment, or to address issues such as localised air pollution or environmental contamination.
- c) The Children Law does not specify which relevant authorities (other than police or Ministers) are empowered, or have responsibility, to take action to protect children.
- d) The Children Law does not include a general requirement on the Minister (or any authority) to take action to promote the welfare of all children in Jersey.
- e) The Children Law does not impose a duty on the Minister to take action to promote the best interest of all children in Jersey.
- f) Statutory protection against harm or neglect inflicted by care-givers does not extend to children aged 16/17 years.
- g) The statutory requirement to protect a child from FGM does not extend to children aged 16/17 years.
- h) The statutory minimum age for employment is below the recommended minimum working age.
- i) There is no legal minimum wage for children under compulsory school age.
- j) Legislation requiring adults to ensure that children use seatbelts does not extend to children aged 15 years or older.
- k) The statutory requirement to use of cycle helmets does not extend to children aged 14 years or older.

Article 18(3)

- l) Legislation (rather than policy) should underpin support for an adoptive parent(s) on an equivalent basis as maternity allowance.

Article 23

- m) The Children Law does not expressly recognise a disabled child as a 'child in need' to help ensure access to additional resources.
- n) The Education Law does not guarantee the right of a child aged under 16 with special educational needs to have their views taken into account when a decision is made about their education.

Article 24

- o) SoJ legislation establishes a scheme under which a dependent child's access to GP and other primary healthcare services will be denied if their parent(s) or carer(s) is not eligible for health insurance, or is unable to meet the criteria to receive the benefit of health insurance.
- p) Independent children may be denied access to healthcare based on their residence or employment status, and due to their inability to meet status-based eligibility criteria.
- q) There is no SoJ legislation which specifies the amount spent on health.
- r) The Charging Policy deals with issues which are anticipated as matters for legislation and is expressly and directly discriminatory as it allocates health resources by reference to status, based on residence and/or employment.
- s) The Charging Policy may lead to children being denied the right to life and development.
- t) Regulations should specify when mental health treatment may be administered without the consent of a child.

Articles 26 and 27

- u) The statutory tests applied to determine adult eligibility for income support may result in children being denied the right to benefit from social security.
- v) Statutory sanctions imposed on adults for leaving work without good cause will deny children the benefit of social security.
- w) Restrictions on the availability of qualified housing will limit access to housing for some families with children, and some independent children.
- x) Children who require help with housing costs to live independently are not guaranteed support.
- y) Legislation fails to provide for housing, or access to housing to be determined by reference to need or vulnerability, including vulnerability by reason of age.

- z) Access to social security benefits and housing in Jersey is governed by legislative regimes which discriminate between children based on their status or that of their parent(s) or caregiver.
- aa) The AHG discriminates amongst those in housing need based on residence status, rather than by vulnerability.
- bb) The AHG discriminates against children as only adults may apply.

Education, Leisure and Cultural Activities

At paragraph 142:

Article 28

- a) There is no legislative framework for educational provision in early childhood.
- b) The Children Law does not protect children against having their education put at risk through employment by family run businesses.
- c) The statutory minimum age for employment is below the recommended minimum working age and may prejudice a child's ability to participate on education.
- d) There is no legislation to require support to be provided to children who do not speak English to learn English, or to support participation in education.
- e) There is no legislation which ensures the right of children who do not meet visa requirements to participate in education.
- f) The Discrimination Law does not prohibit discrimination on religious ground, generally or in relation to access to education.

Article 29

- g) The Education Law does not require education on human rights and the human rights of children to be included in the Jersey Curriculum at all stages.
- h) There is no statutory right for children to be consulted on any decision to withdraw them from religious education.
- i) The Discrimination Law does not list religion and belief as a protected characteristic, with potential that discriminatory practice based on religion or belief may lead to denial of an education in accordance with Articles 28 and 29.
- j) There are no statutory provisions to underpin the teaching of Jèrrais in schools in Jersey.

- k) There is no legislative requirement to include children's views in the statutory review of education.
- l) Legislation does not permit a child who is under 18 a right to appeal in their own name against a decision to suspend/exclude them from education.
- m) Legislation appears ineffective to ensure an education for children who are held in the secure estate.

Article 31

- n) Neither the Education Law nor the Children Law guarantee the right to rest and play and to engage in leisure and cultural activities.
- o) Legislation does not provide comprehensive coverage to ensure that leisure or play facilities used by children are safe.
- p) Findings concerning the failure to adequately protect children from the impact of employment on their education are equally relevant to play, leisure and cultural activities.

Family Environment and Alternative Care

At paragraph 233:

Article 5 and 18(1) and (2)

- a) Gaps in SoJ legislation in relation to social security and housing under Disability, Basic Health and Welfare are relevant here.

Article 9

- b) Under the Children Law 'welfare' is used in preference to best interests in relation to some orders where a child may be separated from its parent(s).
- c) The requirement to take account of the ascertainable wishes and feelings of the child when action is taken under the Children Law does not apply to child assessment orders or emergency protection orders.
- d) The Children Law does not ensure that a child who is separated from their parent(s) is able to maintain contact with their family, friends and acquaintances.
- e) There is no legislative provision requiring a child to be informed of the whereabouts of their parent(s) if separation is as a result of State action.
- f) The Prison Rules do not permit a male prisoner who has sole custody of a child/parental responsibility for a child at the time of sentencing to have that child live with them in prison if aged 9 months or younger.

- g) The Prison Rules do not permit a child aged 9 months or older to live with a parent in prison if this is in the child's best interests.
- h) Legislation does not provide for all children who have been separated from their parents through relinquishment or abandonment to access information about their parent(s).

Article 10

- i) There is no SoJ legislation which provides for children to enter Jersey for the purposes of family reunification.
- j) The JIR provisions which enable adults to enter Jersey may restrict opportunities for family reunification.

Article 20

- k) Informal care which is not arranged by the SoJ is unregulated.
- l) We have been unable to establish whether SoJ legislation or policy prohibits the recruitment and solicitation of children for placement in residential care by agencies or individuals.

Article 21

- m) The Adoption Law does not prioritise the best interests of the child subject to adoption.
- n) SoJ legislation fails to provide children with a right to access information about their birth parents.

Article 25

- o) Legislation does not require that the views of the child are to be taken into account as part of any review of detention in secure accommodation (this is contingent on practical considerations).
- p) The Mental health Law does not specify a discrete procedure for the review of the situation of any child detained under the Law.

Special Protection Measures

At paragraph 334:

Article 22

- a) There is no statutory (or other) provision for a legal adviser to be available before an UASC makes a claim for asylum.
- b) There is no legislation which would guarantee legal aid for an UASC or separated child.
- c) The Children Law does not make specific provision in relation to accommodation that may be provided by the Minister for UASC or separated children.
- d) An UASC or separated child is not guaranteed access publicly funded education until the outcome of their application for asylum is known.
- e) There is no statutory guarantee that an UASC or separated child will not be detained in secure accommodation or youth detention for immigration purposes.
- f) There are no specific measures which would ensure UASC and separated children receive their rights to health care, the benefits of social security, and of housing.
- g) SoJ criminal law does not include particular offences to protect UASC or separated asylum-seeking children from criminal harms.
- h) The Hague Convention has not been given effect in Jersey.
- i) The JIR fail to make provision in areas where it might be anticipated there would be legislation to ensure the rights of USAC or separated children:
- j) The JIR do make clear when an UASC or separated child seeking asylum will receive a Jersey Residence Permit.
- k) The JIR may result in the denial of Indefinite Leave to Remain based on criminal behaviour or other behaviour for offences committed whilst a minor.
- l) The JIR make no provision for family reunification where a child is granted refugee status.
- m) The JIR make no provision for a child to apply for leave to enter and/or remain in Jersey to be with family members other than parents.
- n) The JIR do not require the best interest of the child to be taken into account when decisions are made about return of an UASC or separated child to their country of origin or other intermediary country.

Article 30

- o) A child's linguistic, cultural or ethnic background are not expressly required to be taken into account when applying the welfare test under the Children Law.
- p) SoJ does not protect or promote the Jèrriais language as an indigenous language.

Articles 32-36

- q) Legislation creating drug offences does not specifically criminalise adults who might involve or seek to involve children in the production or trafficking of illegal drugs and psychotropic substances.
- r) There is no SoJ legislation expressly protecting children against modern day slavery.

Article 37(b)-(d)

- s) The Children Law does not require best interests to be taken into account as a primary consideration where a child is deprived of their liberty under the legislation.
- t) The Mental Health Law does not require best interests to be taken into account as a primary consideration where a child should be deprived of their liberty under the legislation.
- u) The Mental Health Law does not include provision to ensure a child detained under the Law can maintain contact with their family.
- v) The Mental Health Law does not permit a child to nominate a preferred 'nearest person'.
- w) There do not appear to be any express and specific standards in place concerning the treatment of children deprived of their liberty for mental health reasons.
- x) Children may be detained alongside adults in the secure estate or when detained under the Mental health Law.

Article 40

- y) There is no overriding statement of principle ensuring that the best interests of the child are a priority in the youth justice system.
- z) The Young Offenders Law does not expressly require detention to be used as a measure of last resort.
- aa) SoJ legislation includes the possibility of detention '*during Her Majesty's pleasure*' for the most serious offences.

- bb) The Young Offenders Law has no provision requiring the child to be heard from directly in criminal proceedings.
- cc) The minimum age of criminal responsibility of 10 years of age is too low.
- dd) Legislation permits children to be tried alongside adults in some cases.
- ee) There is no requirement that criminal charges are read and explained to children.
- ff) Legislation does not specify time limits for criminal matters to be disposed of against children.
- gg) Legislation does not require children should benefit from the lightest sentence available, whether this be the sentence prescribed at the date of commission of an offence, or at time of sentencing.
- hh) In some instances children may be detained with adults, and SoJ legislation does not prevent this.
- ii) Legislation does not ensure that children are provided with legal aid when charged with a criminal matter.