



Jersey

# COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 2019

## **Official Consolidated Version**

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Jersey

## COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 2019

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## COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 2019

A **LAW** to provide for the establishment and functions of an office of the Commissioner for Children and Young People; and for connected purposes.

Commencement [[see endnotes](#)]

### PART 1

#### INTERPRETATION AND APPLICATION

##### 1 Interpretation

(1) In this Law, unless the context indicates otherwise –

“2005 Law” means the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#);

“acting Commissioner” is to be construed in accordance with paragraph 7 of the Schedule;

“administration of the States” has the meaning given in Article 1 of the 2005 Law;

“advisory panel” means the panel appointed under Article 26;

“audit and risk advisory panel” means the panel appointed under Article 27;

“chair of the Public Accounts Committee” means the individual appointed as chair of the committee of that name established by the Standing Orders of the States of Jersey;

“Chief Executive Officer” has the meaning given in Article 3 of the 2005 Law;

“children” means persons who have not attained the age of 18;

“Children Law” means the [Children \(Jersey\) Law 2002](#);

“Commissioner” means the person for the time being appointed to hold the office of the Commissioner for Children and Young People;

“complaint” in relation to a relevant authority or other person means a statement (whether oral, written or electronic) expressing dissatisfaction about an act done by that relevant authority or other person, which is made by or on behalf of a child or young person;

“Data Protection Law” means the [Data Protection \(Jersey\) Law 2018](#);

“financial year” means a year beginning on 1st January;

- “formal investigation” means an investigation conducted under Article 10;
- “Freedom of Information Law” means the [Freedom of Information \(Jersey\) Law 2011](#);
- “Human Rights Law” means the [Human Rights \(Jersey\) Law 2000](#);
- “Information Commissioner” means the person appointed as such under Article 5(1) of the [Data Protection Authority \(Jersey\) Law 2018](#);
- “Jersey Appointments Commission” is to be construed in accordance with Article 17 of the 2005 Law;
- “Minister” is to be construed in accordance with the [States of Jersey Law 2005](#) and includes the Chief Minister;
- “parent” has the meaning given in Article 1(1) of the Children Law and includes any person who has acquired parental responsibility in respect of a child by virtue of an order made by the court under the Children Law, or who is a child’s guardian appointed under Article 7 of that Law;
- “person” includes a relevant authority;
- “president of the scrutiny liaison committee” means the individual appointed as president of the committee of that name established by the Standing Orders of the States of Jersey;
- “primary function” is to be construed in accordance with Article 4;
- “public authority” means a relevant authority described in paragraph (a) and (b) of the definition “relevant authority”;
- “publish” means publish in a manner that is likely to bring it to the attention of those affected;
- “relevant authority” means –
- (a) a public authority listed in any of paragraphs (a) to (i) and (k) of the definition “public authority” in Article 1(1) of the Data Protection Law;
  - (b) to the extent not included in paragraph (a), any body (whether incorporated or unincorporated) which –
    - (i) is in receipt of funding at least half of which is from the States in one or more years,
    - (ii) carries out functions conferred under an enactment,
    - (iii) is appointed, or whose officers are appointed, by a Minister, or
    - (iv) provides any service under a contract made with any public authority included under paragraph (a), the provision of such service being a function of that authority;
  - (c) a “Jersey entity” within the meaning of Article 2(3) of the [Charities \(Jersey\) Law 2014](#), which meets the charity test under Article 5 of that Law;
  - (d) a Jersey entity which does not meet the charity test; or
  - (e) any form of community, religious, or voluntary entity in Jersey, other than a Jersey entity;
- “States Employment Board” means the States Employment Board established under Article 4 of the 2005 Law;
- “strategic plan” means the plan prepared under Article 22;
- “the office” means the office of Commissioner for Children and Young People;

“United Nations Convention on the Rights of the Child” means the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (General Assembly resolution 44/25), ratified by the United Kingdom on 16th December 1991 and extended to Jersey on 29th April 2014 (including any Optional Protocols to that Convention which are in force in relation to the United Kingdom), subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force;

“young people” means persons who have attained the age of 18 and have not attained the age of 25 who –

- (a) have a disability within the meaning of paragraph 8 of Schedule 1 to the [Discrimination \(Jersey\) Law 2013](#);
- (b) are young adults within the meaning given in Article 1(1) of the Young Offenders Law, and are or have been sentenced or are, or have been placed in custody under Part 2 of that Law;
- (c) whilst young persons within the meaning given in Article 1(1) of the Young Offenders Law, were sentenced or placed in custody under Part 2 of that Law; or
- (d) whilst under the age of 18 –
  - (i) were looked after by the Minister, within the meaning of Article 1A of the Children Law,
  - (ii) were the subject of an emergency protection order under Article 37 of the Children Law,
  - (iii) were accommodated in a voluntary home within the meaning of Article 1(1) of the Children Law, or
  - (iv) were the subject of private fostering arrangements under Part 8 of the Children Law;

“Young Offenders Law” means the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#);

“youth advisory panel” means the panel appointed under Article 28.<sup>1</sup>

- (2) Subject to paragraph (3), references in this Law to the “rights of children and young people” means –
  - (a) in relation to children, the rights set out in the United Nations Convention on the Rights of the Child, and
  - (b) in relation to young people, any rights set out in other European or international treaties or conventions protecting the rights of individuals, which extend or apply to Jersey, and which appear to the Commissioner to protect the rights of young people.
- (3) Without prejudice to the generality of paragraph (2), “rights” shall also be taken to include the welfare of children and young people if, in the course of the Commissioner’s discharge of the primary function, the context so requires.
- (4) The States may by Regulations amend the definitions contained in this Article.

## 2 Application of Law

- (1) The discharge of functions by the Commissioner under this Law, applies in relation to children and young people in Jersey, including –
  - (a) children who are in Jersey on a temporary or transitory basis;

- (b) young people (within the meaning given in paragraph (a) of the definition in Article 1(1)) who are in Jersey on a temporary or transitory basis;
  - (c) children (within the meaning of the Children Law) living outside Jersey by reason of arrangements to assist such children under paragraph 4 of Part 1 of Schedule 2 (ministerial support for children and families – arrangements for children looked after by the Minister) to the Children Law;
  - (d) children placed outside Jersey by reason of arrangements under the [Children \(Placement\) \(Jersey\) Regulations 2005](#);
  - (e) children and young people who are removed from Jersey under Part 12 (transfer of patients between Jersey and other jurisdictions) of the [Mental Health \(Jersey\) Law 2016](#); and
  - (f) children and young persons sentenced to youth detention (within the meanings given for those words in Article 1(1) of the Young Offenders Law) which is being served outside Jersey under the Crime (Sentences) Act 1997 of the United Kingdom.
- (2) The States may, by Regulations, amend this Article for the purpose of making further provision about the application of the Commissioner's functions.

## PART 2

### ESTABLISHMENT AND FUNCTIONS OF THE COMMISSIONER

#### 3 Establishment of the Commissioner for Children and Young People

- (1) There is established an office to be known as the Commissioner for Children and Young People.
- (2) The Schedule makes further provision about the office.
- (3) The States may, by Regulations, amend the Schedule for the purpose of making further provision about the office.

#### 4 Primary function of the Commissioner

The primary function of the Commissioner is to promote and protect the rights of children and young people.

#### 5 General functions of the Commissioner

- (1) The Commissioner, in discharging the primary function, may, in particular, discharge the following general functions –
  - (a) keeping under review the adequacy and effectiveness of law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice;
  - (b) keeping under review the adequacy and effectiveness of services provided for children and young people by relevant authorities;
  - (c) promoting awareness and understanding of the rights of children and young people;

- (d) providing human rights education for relevant authorities or other persons that work with, or on behalf of children and young people;
  - (e) promoting harmonisation of legislation and policy with the United Nations Convention on the Rights of the Child, and any other European or international treaties or conventions, protecting the rights of individuals, which extend or apply to Jersey;
  - (f) providing advice and recommendations on the rights of children and young people;
  - (g) bringing any matter relating to the rights of children and young people to the attention of the States or any relevant authority;
  - (h) looking into, or formally investigating any matter relating to the rights of children and young people;
  - (i) bringing, intervening in, or assisting in relation to, legal proceedings or complaints against relevant authorities;
  - (j) monitoring the implementation in Jersey of the United Nations Convention on the Rights of the Child and any other European or international treaties or conventions, protecting the rights of individuals, which extend or apply to Jersey;
  - (k) encouraging the ratification of, and implementation by Jersey of any European or international treaties or conventions, protecting the rights of individuals, which have not been extended, or do not apply to Jersey;
  - (l) reporting on the States' implementation and monitoring of the rights of children and young people;
  - (m) publishing a report on any matter looked into, or formally investigated by the Commissioner.
- (2) Nothing in paragraph (1) is intended to limit the scope of the Commissioner's general functions, which may include discharging such other functions as appear to the Commissioner to be calculated to facilitate, or are incidental or conducive to, the discharge of the Commissioner's primary function.

## **6 Involving children and young people**

- (1) The Commissioner must take reasonable steps to involve children and young people in the work of the Commissioner.
- (2) The Commissioner must, in particular, take reasonable steps to –
  - (a) ensure that children and young people are made aware of –
    - (i) the functions of the Commissioner,
    - (ii) the ways in which they may communicate with the Commissioner, and
    - (iii) the ways in which the Commissioner may respond to any issues which they raise; and
  - (b) consult children and young people, relevant authorities and persons working with, and on behalf of children and young people on –
    - (i) the discharge of the Commissioner's functions, and
    - (ii) the work to be undertaken by the Commissioner.

## **7 United Nations Convention on the Rights of the Child**

- (1) In discharging functions under this Law, the Commissioner must –
  - (a) in relation to children, have regard to the United Nations Convention on the Rights of the Child and its Optional Protocols (as may be amended from time to time); and
  - (b) in relation to children and young people –
    - (i) have regard to the best interests of children and young people as a primary consideration,
    - (ii) encourage others to put forward the best interests of children and young people as a primary consideration whenever decisions are made in respect of, or have a bearing on children or young people,
    - (iii) have regard to, and encourage others to have regard to, the views of children and young people on all matters affecting them, with due allowance being made for age and maturity, and
    - (iv) have regard to any other European or international treaties or conventions, protecting the rights of individuals, which extend or apply to Jersey.
- (2) The Optional Protocols referred to in paragraph (1)(a) are –
  - (a) the Optional Protocol on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25th May 2000 and entered into force on 18th January 2002; and
  - (b) the Optional Protocol on the involvement of children in armed conflict, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25th May 2000 and entered into force on 12th February 2002.
- (3) The States may by Regulations amend this Article.

## **8 Provision of information to Commissioner**

- (1) Subject to the following provisions of this Article, a relevant authority must supply the Commissioner with such information in that authority's possession as the Commissioner may reasonably request for the purposes of the discharge of the Commissioner's functions under Articles 4 (primary function of the Commissioner) and 5 (general functions of the Commissioner).
- (2) The information supplied must be information which that relevant authority would, apart from paragraph (1), lawfully be able to disclose to the Commissioner.
- (3) A relevant authority that is not a public authority need not supply to the Commissioner, under paragraph (1), any information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (4) Subject to paragraph (5), a relevant authority need not supply to the Commissioner under paragraph (1), any information that is, or relates to, advice by the Attorney General or the Solicitor General where the Attorney General has determined that in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so.
- (5) Despite determining that the public interest in supplying the information referred to in paragraph (4) is outweighed by the public interest in not doing so, the Attorney

General may supply the information requested to the Commissioner, after first consulting the relevant authority concerned.

- (6) A relevant authority may, despite not receiving any request from the Commissioner to supply information for the purposes of the discharge of his or her functions under any of Articles 4 and 5, supply any such information it holds to the Commissioner provided that –
  - (a) it is lawfully able to do so; or
  - (b) in the case of information referred to in paragraph (4), the Attorney General has determined that it is in the public interest to supply it.
- (7) Nothing in this Article is intended to limit the operation of the Freedom of Information Law or to prevent the Commissioner from making a request for information under that Law.
- (8) Information supplied by a relevant authority under paragraph (1) must be supplied in such manner and within such period as the Commissioner may reasonably specify.
- (9) The States may, by Regulations, amend this Article for the purpose of making further provision about the supply of information to the Commissioner.

## **9 Powers to enter premises to conduct interviews or observe standards**

- (1) This Article applies for the purposes of the discharge of the Commissioner's functions under Articles 4 and 5.
- (2) The Commissioner, or a person authorised by the Commissioner may, at any reasonable time, enter any premises where a child or young person is living, detained, or otherwise cared for, or receiving services or treatment, for the purposes specified in paragraph (3).
- (3) The purposes referred to in paragraph (2) are –
  - (a) for the purpose of interviewing that child or young person; or
  - (b) for the purpose of observing the standard of accommodation, care, detention, services or treatment provided to children or young people in such premises.
- (4) Subject to paragraphs (5) to (7), an interview of a child or young person under paragraph (3)(a) may be conducted –
  - (a) in private and without the presence of a person who works on the premises, if the child or young person consents;
  - (b) in private at the request of the child or young person in question, and may exclude the presence of any person specified by that child or young person.
- (5) Before interviewing any child or young person, the Commissioner must –
  - (a) inform the parent of the child or young person –
    - (i) of the Commissioner's intention to interview the child or young person, and
    - (ii) of the parent's right under paragraph (7); and
  - (b) supply the parent with sufficient information to enable him or her to exercise that right.
- (6) Paragraph (5) does not apply if in the Commissioner's opinion –
  - (a) it would not be in the interests of the child or young person to inform the parent in accordance with that paragraph; or

- (b) it would not in the circumstances be practicable to do so.
- (7) The parent of the child or young person has the right to be present at any interview unless –
  - (a) in the Commissioner’s opinion –
    - (i) it would not be in the interests of the child or young person for his or her parent to be present, or
    - (ii) it is in the circumstances not practicable for the parent to be present; or
  - (b) the child or young person objects to the parent being present and, in the Commissioner’s opinion, that objection is reasonable (regard being had in particular to the age and understanding of the child or young person).
- (8) Where the Commissioner or a person authorised by the Commissioner proposes to enter premises under paragraph (2), he or she must, if so required, produce some duly authenticated document showing his or her authority to enter premises for the purposes described in paragraph (3).
- (9) A person who enters premises under paragraph (2) may interview any person present on the premises who works there.
- (10) It is immaterial for the purposes of paragraph (4)(a) or (9) whether a person's work is paid under a contract of employment, a contract for services or otherwise, or is unpaid.
- (11) Nothing in this Article authorises the Commissioner to enter any premises (or any part of any premises) used wholly or mainly as a private dwelling.

### **PART 3**

#### **FORMAL INVESTIGATIONS AND ASSISTANCE**

##### **10 Conduct of formal investigations**

- (1) This Article applies where the Commissioner proposes to formally investigate any matter relating to the rights of children and young people under Article 5(1)(h).
- (2) Subject to paragraph (3), the Commissioner may conduct a formal investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to –
  - (a) children and young people generally; or
  - (b) particular groups of children and young people.
- (3) Before conducting a formal investigation under this Article, the Commissioner must first consult the advisory panel.
- (4) The Commissioner may conduct a formal investigation under this Article –
  - (a) where he or she receives a complaint from, or on behalf of a child or young person, that the child’s or young person’s rights have been infringed or adversely affected by any act done by a relevant authority in the provision of services to, or directly in respect of that child or young person; or
  - (b) of his or her own volition where the Commissioner becomes aware of, or receives information about any matter concerning the provision of services by a relevant authority, to or directly in respect of children or young people,

where the rights of those children or young people appear to have been infringed or adversely affected.

- (5) The Commissioner must not conduct a formal investigation under this Article in so far as it would relate to –
  - (a) the making of decisions or taking of action in particular legal proceedings before a court or tribunal; or
  - (b) a matter which is the subject of legal proceedings before a court or tribunal.
- (6) Where it appears reasonable that the matter is capable of being resolved without a formal investigation, the Commissioner must make every reasonable effort to secure that outcome before conducting such an investigation.
- (7) The Commissioner may determine not to conduct a formal investigation into a complaint under paragraph (4)(a) if it appears to the Commissioner that there has been an unreasonable delay in making the complaint to the Commissioner.

## **11 Initiation of formal investigation**

- (1) If the Commissioner decides to conduct a formal investigation, he or she must –
  - (a) draw up terms of reference for that investigation; and
  - (b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the formal investigation and terms of reference to the attention of persons likely to be affected by it.
- (2) Where the Commissioner determines to conduct a formal investigation into a complaint under Article 10(4)(a), or of his or her own volition under Article 10(4)(b), the Commissioner must –
  - (a) provide the relevant authority concerned with –
    - (i) the substance of the allegation made in the complaint, or
    - (ii) the substance of the information about the matter of which the Commissioner became aware, or received, as the case may be; and
  - (b) afford that relevant authority an opportunity to comment on any allegation made in the complaint, or on the matter of which the Commissioner became aware, or received.
- (3) If at any time during the course of a formal investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect a relevant authority or other person, the Commissioner must afford to that authority or other person an opportunity –
  - (a) to give oral or other evidence;
  - (b) to test, by way of cross-examination, any oral evidence given; and
  - (c) only if it appears to the Commissioner reasonable to do so, to test, by way of cross-examination, any other evidence given.
- (4) Where the opportunities set out in paragraph (3) are given to a relevant authority or other person then, in any formal investigation into a complaint under Article 10(4)(a), the same opportunities must be given to the person who made the complaint.
- (5) A relevant authority or the person who made the complaint is entitled to be represented where –

- (a) oral evidence is to be given, and cross-examined (if applicable) under paragraph (3)(a) and (b);
  - (b) other evidence is to be cross-examined under paragraph (3)(c); or
  - (c) a hearing is to be held under paragraph (9).
- (6) Subject to paragraphs (7) and (8), the procedure for the conduct of the formal investigation including the holding of any hearing under paragraph (9), must be such as the Commissioner considers appropriate in the circumstances of the case.
- (7) A formal investigation into a matter concerning an individual child or young person must be conducted in private.
- (8) A formal investigation into any other matter must be conducted in public except to the extent that the Commissioner considers that the taking of evidence in private is necessary or appropriate.
- (9) In conducting a formal investigation, the Commissioner may hold a hearing for the purposes of gathering evidence in relation to the matter in question, but the Commissioner is not obliged to hold such a hearing, and no person is entitled as of right to be heard by the Commissioner.

## **12 Formal investigations: witnesses and documents**

- (1) The Commissioner may require a person –
- (a) to give evidence on any matter within the terms of reference of a formal investigation; or
  - (b) to produce documents in the custody or control of that person which have a bearing on any such matter.
- (2) A person required to give evidence or produce documents under paragraph (1) is entitled to be supported by a representative.
- (3) Where the Commissioner requires a person to give evidence, or produce a document under paragraph (1), the Commissioner must give that person notice in writing specifying –
- (a) the time and place at which the person is to attend before the Commissioner and the particular subjects concerning which that person is required to give evidence; or
  - (b) the documents, or types of documents, which that person is to produce, the date by which that person is to produce them, and the particular subjects concerning which they are required.
- (4) Such notice must be given –
- (a) by sending it by post addressed to that person at the person's usual or last known address, or the person's registered or principal office;
  - (b) by delivery to that person's address (including delivery by a courier or messenger service);
  - (c) by electronic communication; or
  - (d) in the case of an individual, by being handed personally to the individual in question, or to his or her representative, if any.
- (5) The power in paragraph (1)(b) to require a person to produce documents includes, in relation to documents kept by means of a computer or other electronic device for the

storage of information, power to require the person to produce documents in a legible form.

- (6) A person complies with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.
- (7) Any document required to be produced by a relevant authority under paragraph (1)(b) may be redacted if Article 8(2), (3) or (4) applies in relation to any information contained in that document.

### **13 Offences**

- (1) A person given a notice under Article 12 is guilty of an offence if he or she –
  - (a) refuses or fails to attend before the Commissioner as required by the notice;
  - (b) refuses or fails, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice;
  - (c) knowingly provides false or misleading information;
  - (d) deliberately alters, suppresses, conceals or destroys any document which that person is required to produce by the notice; or
  - (e) refuses or fails to produce any such document.
- (2) It is a defence for a person charged with an offence under paragraph (1)(a), (b) or (e) to prove that there was a reasonable excuse for the refusal or failure.
- (3) A person guilty of an offence under this Article is liable to a fine of level 3 on the standard scale.

### **14 Witness privilege**

A person is not obliged under this Law to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings before a court.

### **15 Offences by bodies corporate and partnerships**

- (1) This paragraph applies where an offence committed under Article 13 by a body corporate, limited liability partnership or separate limited partnership, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
  - (b) any person purporting to act in any such capacity.
- (2) Where paragraph (1) applies, the person is also guilty of the offence, and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) Where the affairs of a body corporate are managed by its members, paragraphs (1) and (2) apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.
- (4) In this Article –
  - (a) “limited liability partnership” is to be construed in accordance with Article 2 of the Limited Liability Partnerships (Jersey) Law 1997;

- (b) “separate limited partnership” is to be construed in accordance with Article 3 of the [Separate Limited Partnerships \(Jersey\) Law 2011](#).

## 16 Reports of formal investigations

- (1) The Commissioner must, at the conclusion of any formal investigation, prepare a report of that investigation.
- (2) The Commissioner may prepare a report of a formal investigation in such form or manner as he or she considers appropriate.
- (3) The report must contain any recommendations by the Commissioner arising out of the formal investigation.
- (4) In relation to any such recommendation, the report may include a requirement to respond.
- (5) A requirement to respond is a requirement that a person named in the report must provide, within such period as the Commissioner reasonably requires, a statement in writing to the Commissioner setting out –
  - (a) what the person in question has done or proposes to do in response to the recommendation; or
  - (b) if the person does not intend to do anything in response to the recommendation, the reasons for that.
- (6) Subject to the anonymity requirements set out in Article 24(2) to (4), if the Commissioner considers it appropriate to do so, he or she may –
  - (a) publish a statement provided under paragraph (5) regardless of whether or not the Commissioner intends to publish the report of the formal investigation under Article 17(4); or
  - (b) publicise, in such manner as the Commissioner considers appropriate, a failure to comply with a requirement to respond under paragraph (5).
- (7) A report of a formal investigation may be finalised only if a person named in the report has been given a copy of the draft report and an opportunity to make representations on it within such period as the Commissioner determines is reasonable.
- (8) The Commissioner, in finalising his or her report, is not required to take into account any representations made.

## 17 Disclosure of reports of formal investigations

- (1) The anonymity requirements set out in Article 24(2) to (4) are to apply for the purposes of any report presented, provided or published under this Article.
- (2) The Commissioner must provide a copy of the report of his or her formal investigation to –
  - (a) the person who made the complaint received under Article 10(4)(a), where applicable;
  - (b) the person who is the subject of the formal investigation;
  - (c) the Chief Minister and the president of the scrutiny liaison committee;
  - (d) the Attorney General; and
  - (e) the Chief Executive Officer.<sup>2</sup>

- (3) If the Commissioner considers it necessary or appropriate to do so, he or she may provide a copy of the report of his or her investigation to such other person as the Commissioner considers appropriate.
- (4) Unless the Commissioner considers that it would not, in all the circumstances of the case, be reasonable or appropriate to do so, he or she must, in the discharge of his or her general function under Article 5(1)(m), publish the report of his or her investigation and present it to the States.
- (5) Where paragraph (4) applies, the Commissioner must provide the report to the Greffier of the States who must lay it before the States.

## **18 Assistance in relation to complaints**

- (1) The Commissioner may, in the discharge of his or her general function under Article 5(1)(i), assist a child or young person in relation to the making of a complaint against a relevant authority or other person.
- (2) The giving of assistance under this Article may, for example, include –
  - (a) providing advice on the process or procedure for the making of a complaint to a relevant authority;
  - (b) instigating a complaint on behalf of a child or young person;
  - (c) intervening in a complaint which has been submitted to the relevant authority concerned.
- (3) Intervening in a complaint under paragraph (2)(c) may, for example, include –
  - (a) enquiring into the progress of a complaint on behalf of the child or young person concerned;
  - (b) representing or accompanying the child or young person in any meeting to discuss the complaint with the relevant authority or other person.
- (4) The Commissioner is not precluded from conducting a formal investigation under Article 10 where he or she has assisted a child or young person under this Article.

## **19 Power to bring or intervene in legal proceedings**

- (1) The Commissioner may, in the discharge of his or her general function under Article 5(1)(i), in any court or tribunal –
  - (a) bring proceedings (other than criminal proceedings) involving law or practice concerning the rights of children or young people;
  - (b) intervene in any proceedings involving law or practice concerning the rights of children or young people; or
  - (c) act as *amicus curiae* in any such proceedings.
- (2) The bringing of, or intervening in proceedings under paragraph (1) must not be made except with the leave of the court or tribunal (where required).
- (3) The Commissioner must not bring or apply to intervene in proceedings unless he or she is satisfied that the case raises an issue of particular significance to –
  - (a) children and young people generally; or
  - (b) particular groups of children and young people.

- (4) The Commissioner may, in the course of proceedings for judicial review which the Commissioner brings (or in which he or she intervenes), rely on Article 8(1)(b) (proceedings) of the Human Rights Law and for that purpose –
- (a) the Commissioner need not be a victim or potential victim of the unlawful act to which the proceedings relate;
  - (b) the Commissioner may act only if there is or would be one or more victims of the unlawful act;
  - (c) Article 8(2) of the Human Rights Law is not to apply; and
  - (d) no award of damages may be made to the Commissioner (whether or not the exception in Article 9(3) (judicial remedies) of the Human Rights Law applies).
- (5) An expression used in paragraph (4) has the same meaning given for that expression as in Article 8 of the Human Rights Law.

## **20 Assistance in relation to legal proceedings**

- (1) A child or young person may seek the Commissioner's assistance in relation to –
- (a) proceedings involving law or practice concerning the rights of children or young people which that child or young person has commenced, or wishes to commence; or
  - (b) proceedings in the course of which the child or young person relies, or wishes to rely, on such law or practice.
- (2) Where this Article applies, the Commissioner may, in the discharge of his or her general function under Article 5(1)(i), assist the child or young person concerned provided the Commissioner is satisfied that the case raises an issue of particular significance to –
- (a) children and young people generally; or
  - (b) particular groups of children and young people.

## **PART 4**

### **REPORTS AND CONSULTATION**

## **21 Provision of reports and other documents**

- (1) Subject to the anonymity requirements set out in Article 24(2) to (4), the Commissioner may, if he or she considers it necessary or appropriate to do so –
- (a) produce in such form or manner as he or she determines, reports (other than reports of formal investigations prepared under Article 16), documents or other information, about, or in connection with the discharge of the Commissioner's functions;
  - (b) publish any such reports, documents or other information; and
  - (c) in the case of a report, present it to the States.
- (2) Where paragraph (1)(c) applies, the Commissioner must provide the report to the Greffier of the States who must lay it before the States.

## 22 Strategic plans

- (1) The Commissioner must, in respect of each 4 year period, prepare a plan (referred to in this Article as a “strategic plan”) setting out how the Commissioner proposes to perform the Commissioner’s functions during the 4 year period.
- (2) Subject to paragraphs (3), (6) and (8), the strategic plan must be presented to the States not later than the beginning of the 4 year period to which the plan relates.
- (3) The Commissioner must provide the strategic plan to the Greffier of the States who must lay it before the States.
- (4) The Commissioner may, at any time during a 4 year period, review the strategic plan for the period and present to the States a revised strategic plan.
- (5) Paragraphs (2) and (4) apply to a revised strategic plan as they apply to a strategic plan.
- (6) In the case of a new Commissioner appointed either within, or as at the expiry of the 4 year period, that Commissioner must present to the States a new strategic plan not later than 6 months after the date of his or her appointment, and the 4 year period is to begin as at the date of appointment.
- (7) Paragraphs (2) and (4) apply in the case a new strategic plan published under paragraph (6).
- (8) In the case of the first Commissioner appointed under this Law, that Commissioner must present to the States the first strategic plan not later than 6 months after this Law comes into force.
- (9) In this Article, “4 year period” means the period of 4 years beginning on the day this Law comes into force, and, subject to paragraph (6), each subsequent period of 4 years.

## 23 Annual reports

- (1) The Commissioner must prepare annually a report (the “annual report”) on the discharge of the Commissioner’s functions during the financial year.
- (2) The annual report must include –
  - (a) a review of issues identified by the Commissioner in the financial year as being relevant to children and young people;
  - (b) a review of the functions discharged by the Commissioner’s in the financial year;
  - (c) any recommendations made by the Commissioner arising out of the functions discharged;
  - (d) an overview of work to be undertaken by the Commissioner in the next financial year, including the strategy for involving children and young people in the work of the Commissioner; and
  - (e) the accounts of the office for the financial year.
- (3) Subject to paragraph (4), the report must be presented to the States not later than 6 months after the end of the financial year to which the report relates.
- (4) The Commissioner must provide the report to the Greffier of the States who must lay it before the States.

## **24 Publication and anonymity requirements**

- (1) Subject to the provisions of this Article, the Commissioner must publish the strategic plan and any report laid before the States under Articles 21(2) (provision of reports and other documents) and 23(4) (annual reports).
- (2) The Commissioner must ensure, so far as is reasonable and practicable having regard to the subject matter, that any report, document, statement, or other information which may, or is required to be produced, provided, published or otherwise publicised under any provision of this Law, does not name or identify (whether by reference to any particular characteristics, or otherwise) any child or young person, or group of children or young people, referred to in it.
- (3) This paragraph applies in relation to the following items –
  - (a) a report published under paragraph (1);
  - (b) a statement published under Article 16(6)(a) (reports of formal investigations);
  - (c) a failure to comply with a requirement to respond under Article 16(5), publicised under Article 16(6)(b); and
  - (d) a report provided under Article 17(2) and (3), and published under Article 17(4) (disclosure of reports of formal investigations).
- (4) Apart from identifying any relevant authority, unless the Commissioner determines that it is necessary to do so, any item listed under paragraph (3) –
  - (a) must not name any individual person referred to in that item; and
  - (b) may also omit any particulars which are likely to identify the person concerned and which, in the Commissioner's opinion, can be omitted without impairing the effectiveness of the item in question.
- (5) The Commissioner must take reasonable steps to ensure that the content of any report, document or other information, whether or not published, takes account, so far as practicable, of the age, understanding and usual language of any children or young people by whom it is intended that such a report or other document will be read, and of the effect of any disabilities they may have.

## **25 Minister's duty to consult Commissioner**

- (1) A Minister –
  - (a) must consult the Commissioner upon any proposals for the preparation of any enactment directly concerning children or young people; and
  - (b) may consult the Commissioner upon any other matter concerning children or young people generally, including the provision of services to, or directly in respect of them.
- (2) The Commissioner must, in so far as it appears to the Commissioner reasonable to do so, advise a Minister when so consulted.

## PART 5

### ADVISORY PANELS

#### 26 Advisory panel

- (1) Subject to paragraph (3), the Commissioner must appoint an advisory panel to provide the Commissioner with advice and assistance relating to the discharge of his or her functions generally.
- (2) The advisory panel must consist of persons who (taken together) represent a broad range of interests which are relevant to the Commissioner's functions.
- (3) Following consultation with the Chief Minister and the president of the scrutiny liaison committee, the Commissioner must determine and publish –
  - (a) the criteria and process for appointment to the panel;
  - (b) the terms and conditions applying in respect of an appointment; and
  - (c) the panel's procedures.<sup>3</sup>

#### 27 Audit and risk advisory panel

- (1) Subject to paragraph (3), the Commissioner must appoint an audit and risk advisory panel to provide the Commissioner with advice and assistance in relation to the following matters –
  - (a) the use of resources by the office;
  - (b) the management of risk by the office; and
  - (c) the governance of the office.
- (2) The audit and risk advisory panel must consist of persons who (taken together) have a broad range of experience relevant to audit and risk management.
- (3) The audit and risk advisory panel may, amongst other things, advise the Commissioner upon the appointment of auditors under paragraph 13 (accounts and audit) of the Schedule.
- (4) Following consultation with the Chief Minister, the president of the scrutiny liaison committee, and the chair of the Public Accounts Committee, the Commissioner must determine and publish –
  - (a) the criteria and process for appointment to the panel;
  - (b) the terms and conditions applying in respect of an appointment; and
  - (c) the panel's procedures.<sup>4</sup>

#### 28 Youth advisory panel

- (1) The Commissioner must appoint an advisory panel to be known as the "youth advisory panel", to provide the Commissioner with advice and assistance relating to the discharge of his or her functions generally.
- (2) The youth advisory panel must consist of children and young people who (taken together) represent a broad range of interests which are relevant to the Commissioner's functions.

- (3) The youth advisory panel, may, in particular advise the Commissioner in relation to the preparation of the strategic plan and the annual report.
- (4) The youth advisory panel may also give its views to the Chief Minister and the president of the scrutiny liaison committee as to the suitability of a person for appointment to the office under paragraph 4 of the Schedule.<sup>5</sup>
- (5) Following consultation with the Chief Minister and the president of the scrutiny liaison committee, the Commissioner must determine and publish –
  - (a) the criteria and process for appointment to the panel;
  - (b) the terms and conditions applying in respect of an appointment; and
  - (c) the panel’s procedures.<sup>6</sup>

## PART 6

### DISCLOSURE OF INFORMATION

#### **29 Duty not to disclose information without lawful authority**

- (1) This paragraph applies to a person who is, or has been –
  - (a) the Commissioner;
  - (b) a member of the Commissioner’s staff;
  - (c) a person discharging functions on behalf of the Commissioner; or
  - (d) a person appointed to the advisory panel, audit and risk advisory panel, or youth advisory panel, as the case may be.
- (2) Without prejudice to the Data Protection Law, a person to whom paragraph (1) applies must not, except with lawful authority, disclose information that –
  - (a) has been obtained by, or furnished to, the Commissioner or the office under or for the purposes of this Law;
  - (b) relates to an identified or identifiable individual or relevant authority; and
  - (c) is not at the time of the disclosure, and has not previously been, available to the public from other sources.
- (3) For the purposes of paragraph (2), a disclosure of information is made with lawful authority if –
  - (a) the disclosure is made with the consent of the individual or relevant authority;
  - (b) the information was provided for the purpose of its being made available to the public (in whatever manner) under this Law;
  - (c) the disclosure is made for the purposes of, and is necessary for, the discharge of a function under this Law;
  - (d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Law or otherwise; or
  - (e) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- (3) A person who knowingly or recklessly discloses information in contravention of paragraph (2) is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

**PART 7****CLOSING PROVISIONS****30 Regulations**

The States may by Regulations amend any enactment, including this Law, for the purpose of making such transitional, consequential, incidental, supplementary or savings provisions as they consider necessary or expedient in consequence of any provision made by, or under this Law.

**31** <sup>7</sup>**32 Citation and commencement**

This Law may be cited as the Commissioner for Children and Young People (Jersey) Law 2019 and comes into force 7 days after the day on which it is registered.

## **SCHEDULE<sup>8</sup>**

(Article 3(2))

### **THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE**

#### **1 Status**

The person for the time being holding the office of Commissioner for Children and Young People is, by that name, a corporation sole.

#### **2 Independence of Commissioner**

- (1) In discharging or performing the functions conferred under this Law or any other enactment, the Commissioner must act independently and in a manner free from direct or indirect influence, whether from any administration of the States, the Chief Executive Officer, a Minister, the States or any other person.
- (2) The States must respect, uphold and defend the independence of the Commissioner.
- (3) The terms and conditions of the appointment of the Commissioner must not be construed so as to create a contract of employment or agency between the States, or the Chief Minister and the president of the scrutiny liaison committee, and the person appointed.
- (4) Despite sub-paragraphs (2) and (3) the remuneration of, and the payment of allowances, pension or gratuities to the Commissioner, due under the terms of his or her appointment, must be paid out of the annual income of the States.

#### **3 General powers**

The Commissioner may, for any purpose of his or her office –

- (a) enter into an agreement;
- (b) acquire, hold and dispose of movable or immovable property;
- (c) sue and be sued in any civil proceedings;
- (d) if charged with an offence, defend criminal proceedings;
- (e) determine and charge reasonable sums for anything done or provided by the Commissioner in the discharge of, or in connection with, the Commissioner's functions; and
- (f) generally do anything reasonably necessary or expedient for or incidental to any of the Commissioner's functions.

#### **4 Appointment and tenure of office**

- (1) Subject to the provisions of this Schedule, the Commissioner must hold and vacate office as the Commissioner in accordance with the terms and conditions of his or her appointment.
- (2) The office must be held by a person appointed by the States on a proposition signed by the Chief Minister and the president of the scrutiny liaison committee.

- (3) The States must debate the proposition in camera.
- (4) Before recommending to the States the appointment of a person to hold the office, the Chief Minister and the president of the scrutiny liaison committee must consult with, and take into account the views and recommendations, of the Jersey Appointments Commission, and the views of the youth advisory panel as to the suitability of the person concerned.
- (5) The Chief Minister and the president of the scrutiny liaison committee must –
  - (a) not recommend a person for appointment unless satisfied that the person has the qualifications and experience necessary to discharge the functions of the office; and
  - (b) make a recommendation of a person for appointment on the basis that such a recommendation respects, upholds and defends the independence of the office of Commissioner.
- (6) An appointment to hold the office of Commissioner is for a fixed term of 6 years which cannot be extended.

## **5 Disqualification for appointment, restrictions on holding other appointments and exceptions**

- (1) A person cannot be appointed to hold the office of Commissioner more than once.
- (2) A person cannot be appointed to hold the office of Commissioner if the person –
  - (a) has been, is, or becomes a member of the States;
  - (b) is a States' employee (within the meaning of Article 2 of the 2005 Law) other than –
    - (i) a States' employee who is appointed to hold the office of acting Commissioner, or
    - (ii) a member of the Commissioner's staff provided under paragraph 9;
  - (c) has been, or is the holder of an office (apart from being the holder of the office of Commissioner for the time being) listed in Schedule 1 to the 2005 Law; or
  - (d) has an interest in the provision of services in respect of children and young people in Jersey –
    - (i) whether financial, or
    - (ii) in the person's capacity as an officer, member, trustee or employee of a body providing those services.
- (2A) Unless sub-paragraph (2) otherwise applies, the following people are not disqualified from being appointed to hold the office of Commissioner –
  - (a) the acting Commissioner;
  - (b) any former acting Commissioner; and
  - (c) a member of the Commissioner's staff.
- (3) A person on being appointed to hold the office of Commissioner must cease to hold any other office or employment (whether or not for remuneration) with the States or any States funded body or independently audited States body.
- (4) A person whilst holding office cannot take up any other office or employment referred to in sub-paragraph (3).

- (5) If the acting Commissioner is appointed to hold the office of Commissioner, any period served by the acting Commissioner before that appointment is to be disregarded for the purposes of the 6-year fixed term specified in paragraph 4(6).

## **6 Termination of office as Commissioner**

- (1) The Commissioner ceases to hold office –
- (a) if he or she resigns by giving, in writing, such notice as is required under the terms and conditions of his or her appointment to the Chief Minister and the president of the scrutiny liaison committee;
  - (b) if his or her appointment is revoked under sub-paragraph (3); or
  - (c) on the expiry of his or her term of office.
- (2) Where the Commissioner resigns from office by virtue of sub-paragraph (1)(a), the Chief Minister and the president of the scrutiny liaison committee must, as soon as practicable after receiving that notice of resignation, report it to the States.
- (3) The States may revoke the appointment of the Commissioner on a proposition signed by the Chief Minister and the president of the scrutiny liaison committee.
- (4) The States must debate the proposition in camera.
- (5) The proposition must allege one of the following grounds for revocation, namely, that the Commissioner –
- (a) has become, by virtue of one of the provisions in paragraph 5(2)(a) to (d), disqualified for appointment;
  - (b) is incapacitated by physical or mental illness;
  - (c) without reasonable excuse, has failed to discharge his or her functions; or
  - (d) has behaved in a way that is not compatible with his or her continuing in office, or is otherwise unable or unfit to discharge the functions of the Commissioner.
- (6) The report accompanying the proposition must set out details of the evidence to be relied upon to support the allegation.
- (7) The proposition must not be lodged unless the Commissioner –
- (a) has been given a copy of the report mentioned in sub-paragraph (6); and
  - (b) has been given such reasonable opportunity as the circumstances allow to prepare a written statement in respect of the evidence mentioned in the report.
- (8) Any statement prepared in accordance with sub-paragraph (7)(b) must accompany the proposition when it is lodged.
- (9) When the proposition has been lodged the Chief Minister may, with the approval of the president of the scrutiny liaison committee, suspend the Commissioner from office.
- (10) The Commissioner must be restored to office without loss of remuneration or any other benefits if the proposition –
- (a) is withdrawn;
  - (b) is not approved by the States after debate; or
  - (c) is not debated by the States within 3 months of being lodged.

## **7 Appointment of acting Commissioner**

- (1) Where there is no Commissioner for the time being, or the Commissioner is unable to act, the Chief Minister and the president of the scrutiny liaison committee may appoint a person (whether or not a member of the Commissioner's staff) to discharge the Commissioner's functions until a new Commissioner is appointed under paragraph 4, or the Commissioner is again able to act.
- (2) A person appointed under sub-paragraph (1) is to be referred to as the "acting Commissioner".
- (3) A person cannot hold the office of acting Commissioner if paragraph 5(2)(a) or (c) applies in his or her case.
- (4) Whilst holding office as such, the acting Commissioner is to be treated as if he or she were the Commissioner for the purposes of this Law.
- (5) The Chief Minister and the president of the scrutiny liaison committee must, as soon as practicable, report an appointment under this paragraph to the States.

## **8 Remuneration and pension of Commissioner**

The States Employment Board must determine the Commissioner's –

- (a) remuneration and allowances; and
- (b) entitlement to a pension, or gratuities.

## **9 Staff and resources of Commissioner**

- (1) The States must ensure that the Commissioner is provided with such financial and administrative resources, and other support, including staff, services, equipment and accommodation, so as to enable the Commissioner to discharge his or her functions under this Law, or under any other enactment, properly and effectively.
- (2) To the extent that any States' employee (within the meaning of the 2005 Law), while provided under sub-paragraph (1), performs a function under the direction of the Commissioner, the employee is to be treated as a member of the Commissioner's staff for the purposes of this Law.

## **10 Advisers and other services**

- (1) The Commissioner may obtain such legal advice, or any other advice, assistance or service from any person who, in the opinion of the Commissioner, is qualified to give it, as is required to facilitate, or is conducive or incidental to –
  - (a) the discharge of the Commissioner's functions; or
  - (b) the proper governance and management of the office.
- (2) The Commissioner may pay to a person referred to in sub-paragraph (1), such fees and allowances as the Commissioner determines are reasonable.

## **11 Delegation of functions**

The Commissioner may authorise any person to discharge functions on behalf of the Commissioner to the extent specified in the authorisation, but any such delegation of authority does not –

- (a) affect the responsibility of the Commissioner for the discharge of the functions; or
- (b) prevent the discharge of the functions by the Commissioner himself or herself.

## 12 Limitation of civil liability

- (1) This paragraph applies to –
  - (a) a person who is or has been the Commissioner;
  - (b) a person who is, or has been a member of staff, or is acting or has acted as an agent of the office of the Commissioner, or who is performing any duty or exercising any power on behalf of the office of the Commissioner;
  - (c) except where any enactment or contract provides otherwise, the Chief Minister, the president of the scrutiny liaison committee and the States.
- (2) A person to whom this paragraph applies is not liable in damages for any act done or omitted in the discharge, or purported discharge, of the functions of the Commissioner by or under this Law or any other enactment.
- (3) Sub-paragraph (2) does not apply –
  - (a) if it is shown that the act was done in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).

## 13 Accounts and audit

- (1) The Commissioner must –
  - (a) keep proper accounts and proper records in relation to the accounts; and
  - (b) prepare accounts in respect of each financial year.
- (2) The Commissioner may, on such basis as the Commissioner determines, appoint auditors –
  - (a) qualified to be recognised auditors in accordance with Article 112 of the [Companies \(Jersey\) Law 1991](#);
  - (b) to audit the accounts of the office in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the office for the financial year in question and of the state of the office's affairs at the end of that year.
- (3) This paragraph is without prejudice to any additional accounting requirements –
  - (a) imposed by any enactment; or
  - (b) agreed as a condition lawfully attached to any funding accepted by the Commissioner from the States.

## 14 Exemption from income tax

Any sum received in respect of a charge made under paragraph 3(e), must not be treated as income liable to income tax under the [Income Tax \(Jersey\) Law 1961](#).

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	°Projet No (where applicable)
Commissioner for Children and Young People (Jersey) Law 2019	<a href="#">L.8/2019</a>	26 July 2019	<a href="#">P.18/2019</a>
Children (Convention Rights) (Jersey) Law 2022	<a href="#">L.20/2022</a>	24 June 2022	<a href="#">P.19/2022</a>
Commissioner for Children and Young People (Amendment of Law) (Jersey) Regulations 2023	<a href="#">R&amp;O.35/2023</a>	30 May 2023	<a href="#">P.12/2023</a>

°Projets available at [statesassembly.gov.je](https://statesassembly.gov.je)

### Table of Endnote References

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<sup>1</sup> Article 1(1)	<i>amended by L.20/2022</i>
<sup>2</sup> Article 17(2)	<i>amended by L.20/2022</i>
<sup>3</sup> Article 26(3)	<i>amended by L.20/2022</i>
<sup>4</sup> Article 27(4)	<i>amended by L.20/2022</i>
<sup>5</sup> Article 28(4)	<i>amended by L.20/2022</i>
<sup>6</sup> Article 28(5)	<i>amended by L.20/2022</i>
<sup>7</sup> Article 31	<i>spent, omitted</i>
<sup>8</sup> Schedule	<i>editorial change, “Article 2(2)” deleted, “Article 3(2)” inserted instead, amended by L.20/2022, R&amp;O.35/2023</i>