

# **Children's Legislation Transformation Programme**

## **Objectives**

The Children's Legislation Transformation Programme (CLTP) will support government and practitioners to help make Jersey the best place for children to grow up. The CLTP will deliver a legislative framework that:

- 1. underpins and drives delivery of the Children's and Young People's Plan outcomes
- 2. establishes governance arrangements and strengthens accountability
- 3. defines and makes provision for an integrated services **structure** that delivers those outcomes for Jersey's children, young people and their families.

This will include core children's legislation that works in parallel with, and drives the policy objectives, of associated legislation in fields such as family law, education, justice and housing (see Figure 1, below). The core legislation and associated legislation will work together to form an integrated whole.



Since bringing forward the States of Jersey's response to the Independent Jersey Care Inquiry (IJCI), there have been changes to policies which impact children, enhanced training for those who work with children and the introduction of the Children and Young People's Plan 2019-2023 to drive forward a transformation in the way that services are provided to children in Jersey.

The CLTP will support the Children's Plan by proposing changes to legislation that currently impedes the delivery of the commitments which will be made to the island's children under the Plan.

All Ministers and the Executive Leadership of the public sector have signed a pledge, committing to "Putting Children First" and the Council of Ministers has made this the first strategic priority of the government's Common Strategic Policy (CSP). Across government there is a growing cultural shift – a clear and present desire to put children at the heart of island life. The CLTP aims to sustain this shift in the long-term, amending the law so that leaders and practitioners are able to put children and young people first.

### Outcomes

The States of Jersey's vision is that all children should have an equal opportunity to be safe, flourish and fulfil their potential.<sup>1</sup> This schedule of legislation (see tables starting on page 7) sets out the areas of legislation which requires updating to realise Jersey's outcomes for children and young people to be able to:

- Grow up safely feel part of a loving family and a community that cares
- Learn and achieve have the best start in life and go on to achieve their full potential
- Live a healthy life enjoy the best health and wellbeing possible
- Be valued and involved having a say in the decisions that affect their everyday lives, regardless of where they live or the school they go to.

#### Grow up Safely

The CLTP will ensure legislation that protects and safeguards children's interests in the youth justice system, in the care system and if their family has broken down. Statutory bodies will provide and oversee a robust, legally enforceable safeguarding regime. The Jersey Care Commission will be given further powers to regulate and inspect individuals and organisations providing services to children. The functions of the Safeguarding Partnership Board will be established in law alongside legal obligations to cooperate with the Board.

Legislation has already been delivered to provide children with more effective protection from sexual offences, whilst an updated child abduction law, the offence of causing or allowing a child's death, domestic abuse law and criminal record disclosure mechanisms will be introduced.

Young people in employment will be afforded greater protections under the law to safeguard against engagement in inappropriate work, unsuitable for their age.

<sup>&</sup>lt;sup>1</sup> States of Jersey, 'Children and Young People's Plan 2019-2023. Putting Children First: The plan for Jersey's children, young people and their families'

Independent Reviewing Officers will be given a statutory role. Special Guardianship Orders will enable social workers and the courts to provide more effective protection for children placed with someone other than their parents on a long-term basis.

Practitioners will be better supported by legislation governing care proceedings, to speed up applications for Care and Supervision Orders and to ensure that children do not suffer as a result of administrative delays. The Adoption (Jersey) Law 1961 will be overhauled to bring it up to date with modern practice and to ensure that the adoption process is agile and efficient to secure children's long-term futures without unnecessary administrative delays.

#### Learn and Achieve

An updated Education Law, grounded in current best practice, will be designed to meet the specific needs and aspirations of all school pupils. The education participation age will be raised, providing further opportunities to students to develop skills that will better equip them to develop a career in the future.

New legislation will introduce mechanisms to ensure that young people in work receive appropriate training and that those who are not in education, employment or training (NEET) will have support to find suitable opportunities.

"Child In Need" legislative provisions will impose a statutory duty on the States of Jersey to ensure that those children who require particular support are provided with the necessary assistance to have the best start in life. This help will extend to disabled children, those with special educational needs and those who find themselves in the youth justice and secure care system.

#### Live a Healthy Life

Action will be taken to prevent discrimination against anyone with children who wishes to rent a property and to provide sufficient security of tenure for families with children.

New legislation will better support children, young people and their families to access key services which the States of Jersey will be placed under a statutory duty to provide. Existing, highly valued local services, such as the Youth Service and the Jersey Family Court Advisory Service (JFCAS), will be safeguarded whilst new services will be provided, such as those for young people leaving care.

#### Be Valued and Involved

Steps have been taken towards further incorporating the United Nations Convention on the Rights of the Child (UNCRC) so that the development of Jersey's legislation and policies must include due regard to children's rights as set out in the UNCRC.<sup>2</sup>

Work has already commenced to provide the Children's Commissioner with legal function and powers to promote and protect the rights of children and young people. The Commissioner will,

<sup>&</sup>lt;sup>2</sup> United Nations Convention on the Rights of the Child Incorporation: Instructions for Law Drafting, MD-H-2018-0020

among other things, be responsible for promoting awareness and understanding of the rights of children and young people. In addition the Commissioner will have powers to review, look into and, only where essential, investigate matters relating to those rights.

Corporate parenting principles will be enshrined in law. These principles will set out the duties and responsibilities that the States of Jersey has in relation to looked after children, as well as engendering understanding of and appreciation for the importance of corporate parenting.

#### Strengthened Transitions

New Care Leavers legislation will provide statutory rights and individualised support to young people who leave care to access services dedicated to their specific needs. These services will assist them to transition to living and independent adult life. Those who wish to remain in provided accommodation after they leave care will be given certain legal rights to stay within care settings. This will extend the duties that the States of Jersey already has to provide for young people it looks after to those who have left care settings.

### **Delivery Approach**

The schedule of legislation is separated into thirty nine different areas of policy. These reflect how children's lives may be impacted by legislation; not how existing legislation is structured or the potential structure of the new/amended legislation.

#### Commitment to Consult

Each item of legislation listed in this schedule denotes a work-stream within the CLTP. Stakeholders both within and outside the States of Jersey will be consulted on each work-stream. Children and young people will also be consulted as appropriate. As the States of Jersey sets out to make better law for children, it is important to take account of their views.

### Schedule

#### Determining the Contents of the Schedule of legislation

Research commenced with an analysis of the key legislative provisions relating to and impacting upon children in England, Scotland and Jersey. This provided a map of the gaps in Jersey's legislation upon comparison with England and Scotland. Items have been added to the schedule of legislation where there is understanding that there is a deficiency in the island's law.

In addition, significant work has taken place since the report of the IJCl in July 2017, including the Jersey Youth Justice Review and the development of the Children and Young People's Plan 2019 – 2023, which have turned up aspects of Jersey legislation that require change. Items have been included in the schedule of legislation where issues have been raised by practitioners who have been consulted in the course of this work.

The decision to further implement the UNCRC does not necessarily require Jersey to bring forward legislative changes that go beyond current provisions in England and Scotland. However, some measures, such as raising the legal age of marriage and prohibiting the employment of under 16s, have been added to the schedule of legislation as these provisions will ensure that Jersey implements the convention more effectively than the UK.

#### Commencement Phase 1

- "Child in Need" Statutory Provisions
- Youth Justice
- Reciprocal Care Orders
- Parental Responsibility Orders
- Care Leavers
- Regulation and Inspection of Children's Social Work Services & Social Services
- Corporate Parenting
- Public Law Outline
- Discrimination Against Children by Landlords
- Duty on Relevant Bodies to Cooperate to Safeguard Children and to promote the welfare of Vulnerable Adults
- United Nations Convention on the Rights of the Child
- Family Law Matters
- Commissioner for Children and Young People
- Sexual Offences
- Criminal Procedures in relation to children and young people
- Early Years Education and Childcare
- Education Law
- Provisions for those Not in Education Employment or Training
- Corporal Punishment

#### Commencement Phase 2

- Regulation and Inspection of Further Children's Services
- Special Guardianship Orders
- The Safeguarding Partnership Board
- Independent Reviewing Officers
- Role of the Chief Social Worker
- Safeguarding and the Welfare of Children in Hospitals

#### Commencement Phase 3

- Harbouring of Children
- Duty to Publish a Children's Plan
- Secure Care Law
- Adoption Law
- Parental Leave

- Domestic Abuse Law
- Automatic Appointment of Lawyers in Children's Public Law Cases
- Criminal Background Checks
- Employment of Children
- Youth Service
- Causing or Allowing the Death of a Child
- Child Restraints in Vehicles
- Jersey Family Court Advisory Service
- Lead Worker
- Tenancy Laws

It is envisaged that policy development including research and investigation will commence on all Phase 1 items (not already in progress) in January 2019, with work beginning on Phase 2 in January 2020.

## Commencement Phase 1

Items of legislation on which scoping work has already commenced

Area of Policy Change and/or Legislation Change	Reason for Implementing
<u>"Child in Need" Provisions</u> A child in need will be defined in law. Provisions will include a duty placed on the States of Jersey to assess a child where there is reasonable cause to suspect that they are in need. Consideration will be given to making the provision of services a statutory duty. These changes will be looked at in conjunction with legislation relating to the delivery of special educational services, education for those in youth detention, and education for children suffering ill health and children with a disability. Any changes will consider existing fostering legislation.	The IJCI report noted that the failure of the Children (Jersey) Law 2002 to include child in need provisions, "has led to a lack of impetus in tackling the causes of deprivation and of child maltreatment, a lack of clarity about thresholds for intervention and insufficient weight being given to the rights and assessed needs of children and young people." <sup>3</sup> New legislative provisions will enable children in most need of support to access appropriate services as a matter of course.
Youth Justice Measures will be taken to address legal issues raised by the ongoing review into youth justice. Recommendation 5 of the IJCI report stated that the youth justice review should be, "undertaken with a view to a welfare-based model rather than a punitive one." <sup>4</sup> As such, this work will be considered and conducted alongside the introduction of child in need law.	The IJCI report recommended that a review of Jersey's youth justice system be undertaken – it is important to act on this review's findings. These measures will better protect the rights of children and young people in Jersey's criminal courts.
Reciprocal Care Orders Changes will be made to ensure that care orders granted in Jersey will have full effect in the UK, guaranteeing the same legal protections for children placed off-island as those placed in Jersey.	For practical reasons a number of children subject to care orders are placed outside Jersey. These provisions will provide absolute clarity over the legal status of these children.

<sup>&</sup>lt;sup>3</sup> Report of the IJCI, Vol.3, p.12, paragraph 12.49

<sup>&</sup>lt;sup>4</sup> Report of the IJCI, Vol.3, pp.59-61, paragraphs 13.31-13.36

<u>Parental Responsibility Orders</u> New provisions will enable same-sex couples to obtain parental responsibility for their children automatically. Step-parents will also be able to enter into parental responsibility agreements.	There are a large number of step-parents in Jersey for whom the ability to take on legal responsibilities for step-children would have a significant positive impact on the administration of family life. Equally parental rights for same-sex couples are not guaranteed under the current law.
<u>Care Leavers</u> New legislation will support young people who leave care to access services that are dedicated to their individual needs and bolster their rights to remain in certain care settings. This legislation will extend duties that the States of Jersey already has to provide for young people it looks after to those it has ceased to look after. Any changes will consider existing fostering legislation.	Young people who leave care in Jersey currently have no particular statutory rights. These provisions will give certainty to care leavers and ensure that individualised support will be provided to them.
<b><u>Regulation and Inspection of Services for Vulnerable Children</u></b> Statutory registration and inspection requirements will be introduced for services to children who may be vulnerable and in need.	The requirements for those who provide services for children to register and for those services to be inspected is key to ensuring that only fit and proper providers of appropriate services are able to operate in Jersey. This was Recommendation 3 of the IJCI report.
<u>Corporate Parenting</u> The duties and responsibilities that the States of Jersey has as the corporate parent of looked after children and care leavers will be enshrined in law. This legislation will also specify the corporate parenting responsibilities of relevant additional agencies.	The IJCI report stated, "the corporate parent is an important concept in social policy, and it is essential that all those with this responsibility have a common understanding and are equipped to fulfil those responsibilities." <sup>5</sup> Defining this concept in Jersey law will ensure that this important concept becomes embedded in the psyche of those with responsibility for looked after children in Jersey.
Public Law Outline Provisions will be introduced, setting out the duties that the States of Jersey have when considering taking a case to court to ask for a Care Order or a Supervision Order to be made. This will mandate the work that should usually be undertaken before proceedings can commence and when proceedings are issued ensuring that timescales are set that are in line with the child's best interest.	It is in the best interests of children for decisions about their long term care to be made with the minimum of delay. These measures will help to ensure that the duration of care proceedings is reduced and that pre- proceedings work is carried out more effectively

<sup>&</sup>lt;sup>5</sup> Report of the IJCI, Vol.1, p.59, paragraph 13.16

Duty on Relevant Bodies to Cooperate to Safeguard and to Promote theWelfare of Children and Vulnerable AdultsAll government bodies and certain other relevant agencies that have responsibility for children and vulnerable adults will be placed under a statutory duty to cooperate to safeguard the well-being of children.	This legal duty will buttress a safeguarding system in Jersey in which all relevant organisations must work together to keep children safe and to promote their welfare.
<u>United Nations Conventions on the Rights of the Child (UNCRC)</u> New law will ensure that due regard must be given to the UNCRC when developing law and policy.	The UNCRC has 54 articles that cover all aspects of a child's life and set out the civil, political, economic, social and cultural rights that all children everywhere are entitled to. This law will keep Jersey to its commitments to promote the rights of children in accordance with the convention.
<b>Family Law Matters</b> Measures will be taken to resolve conflicts with canon law and to raise the minimum age of marriage in Jersey. Divorce laws will be reformed to make them fit for purpose in line with reforms being undertaken in England and Wales.	It is recognised that current divorce law can cause unnecessary animosity between divorcing couples which can have a negative impact on their abilities to bring children up in a stable environment. Changes to the law will address this and ensure that the interests of children are both supported and of paramount importance in civil law cases.
The Commissioner for Children and Young People (Jersey) Law 201 This will be brought forward to establish the office of the Commissioner for Children and Young People.	The IJCI recommended that an independent Children's Commissioner should be appointed to oversee matters relating to the well-being and welfare of children. <sup>6</sup> The first Jersey Children's Commissioner was appointed in January 2018 and legislation will set out the Commissioner's duties, powers and responsibilities.
<b><u>Parental Leave</u></b> The rights of parents to take more days of paid leave after their child is born or adopted will continue to be advanced. The existing maternity leave allowance will be examined prior to undertaking a wider review.	Affording parents the time to bond with their new child without having to work is key to promoting the development of stable family environments.
Sexual Offences The Sexual Offences (Jersey) Law 2018 came into force on 23 November 2018. Among other important provisions, it creates a number of new sexual offences against children and provides greater powers to prosecute those who perpetrate these crimes.	This law was necessary to keep legislation up-to-date to ensure that legislation covers all types of child sex offences that might be committed, including offences committed online. This updates the law not just in line with but beyond the UK.

<sup>&</sup>lt;sup>6</sup> Report of the IJCI, Vol.3, p.50, paragraph 13.7

<u>Criminal Procedure</u> The Criminal Procedure (Jersey) Law 2018, subject to the completion of associated criminal procedure rules of Court, is expected to come into force at the end of 2019. Among other important provisions, it introduces more robust procedures relating to the provision of evidence by vulnerable witnesses such as children in criminal cases and to the process for determining where child defendants should be tried.	A consolidation of existing criminal procedure and changes to the dated Loi (1864) réglant la Procédure Criminelle were necessary to underpin the aim of the Jersey criminal justice system to deal with all cases justly, including cases involving vulnerable witnesses such as children.
Education Law A review of the Education (Jersey) Law 1999 will be undertaken with a view to updating, revising and clarifying the Education Law.	Education Law should be addressed alongside and in conjunction with the wide-ranging improvements that are being implemented across all children's environments in Jersey.
<b>Provisions for those Not in Education Employment or Training</b> Legislation will be brought forward to require young people to be meaningfully engaged in employment, education or training until the age of 18. Associated duties will be placed on the States of Jersey to provide appropriate opportunities to 16 to 18 year olds as well as oversight of the further education system.	There is currently no legal mechanism to ensure that young people have access to education or training beyond the age of 16 in Jersey. This has led to an absence of employment opportunities for a number of young people.
<u>Corporal Punishment</u> The defence of reasonable corporal punishment will be removed from Jersey law. This will make it illegal to administer corporal punishment in all cases.	The lawful administration of corporal punishment in any context runs contra to the rights of the child under the UNCRC.

# Commencement Phase 2

Area of Policy Change and/or Legislation Change	Reason for Implementing
Regulation and Inspection of Services for Children Statutory registration and inspection requirements will be introduced for services for children, potentially including child day care; foster care; health and social care; language schools; schools; and independent schools.	The requirements for those who provide services for children to register and for those services to be inspected is key to ensuring that only fit and proper providers of appropriate services are able to operate in Jersey. This was Recommendation 3 of the IJCI report.
<b>Special Guardianship Orders</b> Powers will be given to the court to make Special Guardianship Orders in order to place a child or young person to live with someone other than their parent(s) on a long-term basis. A Special Guardian will get Parental Responsibility for the child until the child reaches the age of 18. Unlike adoption, a Special Guardianship Order will not remove Parental Responsibility from the child's birth parent(s).	A Special Guardianship Order secures the relationship between the special guardian(s) and the child or young person and enables the special guardian(s) to become more involved in decision making by giving them Parental Responsibility above and beyond that of the parents, whilst maintaining links with the child's or young person's parent(s).
Discrimination Against Children by Landlords Action will be taken to prevent discrimination against prospective tenants who are domiciled with and have legal custody of a child under the age of 18 years.	Legislation will be brought forward in response to a decision of the States Assembly. <sup>7</sup>
Safeguarding Partnership Board Legislation will be brought forward to entrench the role and responsibilities of the Safeguarding Partnership Board (SPB) into Jersey law.	Jersey's SPB was established in January 2013. It is made up of an independent chair and 30 members representing key agencies which have responsibility for safeguarding children and adults in Jersey. Legislation will give legal enforceability to the Board's work.
Independent Reviewing Officers The role of Independent Reviewing Officers (IROs) will be incorporated into Jersey law, defining their role in reviewing the care plans of looked after children.	IROs play a central role in reviewing the care that looked after children are receiving and ensuring that their voice is heard at all times.

<sup>&</sup>lt;sup>7</sup> 'Housing: Prevention of discrimination by landlords against tenants with children' (P.31/2018)

Role of the Chief Social Worker The duties and responsibilities of Jersey's Chief Social Worker will be set out in legislation. Regulations will include measures to prohibit certain functions being carried out by individuals who lack relevant social work qualifications.	There are few regulations founded in Jersey law that specifically relate to social work. This is an obvious deficiency in legislation.
Safeguarding and the Welfare of Children in Hospitals The role of the Designated Safeguarding Doctor and Nurse will be defined in legislation. New laws will set out the duty of healthcare providers to safeguard children in their care and the duty of the States of Jersey to visit children in long-term hospital care. Provisions will also address the particular needs of children being treated for mental health conditions.	The Designated Safeguarding Doctor and Nurse already operate in Jersey, while safeguarding measures take place in practice in health settings in Jersey. These measures are not, however, legally enforceable.

## Commencement Phase 3

Area of Policy Change and/or Legislation Change	Reason for Implementing
Harbouring of Children It will become an offence to detain (unless by a lawful authority) or to take a child under 16 years of age from a person with lawful control of the child. This will include the offence of keeping a child out of the lawful control of any person entitled to lawful control of the child.	Current Jersey law on the abduction of children states that an offence can only be committed if the child is taken from the care of the States of Jersey.
Duty to Publish a Children's Plan All future governments will be required to publish a Children's Plan detailing their objectives for children and how they will continue to improve outcomes for Jersey's children. After the publication of the first Children's Plan there will be a legal requirement on the States of Jersey to publish updated plans in the future.	The IJCI report recommended that the States of Jersey should set out its responsibilities towards children in a Children's Plan to coincide with the Medium-Term Financial Plan. <sup>8</sup> Legislation will ensure that the Plan will be produced in future.
Secure Care Law Changes will be made to the law governing the placing of children in secure accommodation.	Currently, Secure Accommodation Orders can only be granted if the child on whom the order is made is looked after by the States of Jersey. This can require parallel care proceedings to be issues which can be problematic and requires change.
Adoption Law A full-scale review of the Adoption (Jersey) Law 1961 will be undertaken with a view to significantly updating, revising and clarifying provisions in Jersey's adoption law. Any changes will consider existing fostering legislation.	The making of an Adoption Order is the most significant power available to courts in relation to a child's life. It is crucial that this law is updated.
Domestic Abuse Law New law will make it easier to prosecute domestic abuse and will provide greater powers to the police and the courts to support victims more effectively.	Changes to domestic abuse law are being undertaken in the UK. In Jersey there is currently no statutory definition for domestic abuse. New measures would also assist in preventing abuse at the hands of past offenders.

<sup>&</sup>lt;sup>8</sup> Report of the IJCI, Vol.3, p.62, paragraph 13.39

Automatic Appointment of Lawyers in Children's Public Law Cases Provisions will be brought forward to clarify, and enhance, requirements for the appointment of legal representation for children involved in public law cases.	The law does not guarantee the appointment of an independent person to act as the voice of a child involved in proceedings affecting their lives.
<b><u>Criminal Background Checks</u></b> In order to better prevent inappropriate individuals from working with children, a statutory duty will be imposed on government bodies, companies and certain organisations to provide relevant vetting information on request. Individuals will also be placed under a duty to disclose relevant convictions.	Jersey already utilises Disclosure Scotland to check that only appropriate individuals are working with children in Jersey. New law will entrench a uniform system of disclosure in Jersey and ensure that all relevant information is being divulged for the purposes of criminal background checks.
<b>Employment of Children</b> Measures will be taken to strengthen protections in Jersey's employment law for children and young people engaged in certain types of work under the age of 18.	Jersey employment law currently interferes with the rights of the child under the UNCRC as it allows children under 16 to undertake work in conditions that are inappropriate for their age.
Youth Service The Jersey Youth Service, its role and responsibilities will be provided for in legislation.	Existing youth services are not provided for in law. This means there is no duty on the States of Jersey to fund and provide these services.
<b><u>Causing or Allowing the Death of a Child</u></b> The causing of or allowing the death of a child or a vulnerable adult will become an offence. Those who fail to offer a plausible explanation for the death of a child will also be guilty of an offence under this law.	Legislation to this effect has been introduced in the UK. It will address some of the evidential barriers that can hamper the effective prosecution of individuals for child deaths.
<u>Child Restraints in Vehicles</u> Legislation will be amended to improve child safety standards in vehicles on Jersey's roads. New law will mandate that children of less than 12 years old and under 1.35 metres in height must use appropriate EU standard restraints in vehicles.	This will bring Jersey into line with EU standards on child vehicle restraints.

JFCAS Provisions will be introduced to better safeguard the rights of children involved in civil law proceedings, including the establishment of the Jersey Family Court Advisory Service (JFCAS) in law as well as practice.	Court welfare officers from JFCAS look after the interests of children involved in family court proceedings. New law will ensure that JFCAS is used appropriately in relevant court proceedings and that its services are sustained in the long-term
Lead Worker Legislation will be brought forward to provide children, young people and their parents with access to a Lead Worker. A Lead Worker will be a clear point of contact available to provide information or advice, or if they want to talk about any worries and seek support.	This is a way to unlock appropriate services for children and young people. It has worked effectively in practice in Scotland.
Tenancy Laws Existing tenancy laws will be reviewed to ensure that they provide sufficient security of tenure for families with children.	A review of the law is necessary to ensure that it complies with the UNCRC.