

Children's Rights in Jersey

Indirect Incorporation of the
United Nations Convention on the Rights of the Child

Public Consultation Guide

Strategic Policy, Planning and Performance

20 November 2019 – 11 February 2020



Glossary

You may find some of the terms in this consultation guide unfamiliar. These are defined below:

Children’s Rights Impact Assessment (CRIA)

A documented process to predict the impacts of policy, legislation and practice on children’s rights

Direct incorporation

Making convention rights legally enforceable through the courts, giving rights-holders a remedy for the violation or infringement of their rights if State Parties fail to act compatibly with the convention

Due Regard

A balanced consideration of the UNCRC together with all relevant issues

Duty-bearers

1. Those responsible for promoting and protecting children’s rights
2. Those with a legal duty to consider children’s rights when performing their functions

Executive, the

A collective term for the Council of Ministers and Government of Jersey departments

Government of Jersey

Government departments under the direction of Ministers

Implementation

Ongoing realisation of the UNCRC through a range of measures including legal incorporation

Indirect incorporation

A legal requirement to consider convention rights as an aspect of policy development leading to cultural acceptance of convention rights

Ratification

A country’s formal agreement to support and implement the UNCRC

Rights-holders

Children and young people aged under 18

State party

A country which has ratified the UNCRC

States of Jersey

The States Assembly, Jersey’s elected parliament

UN Committee

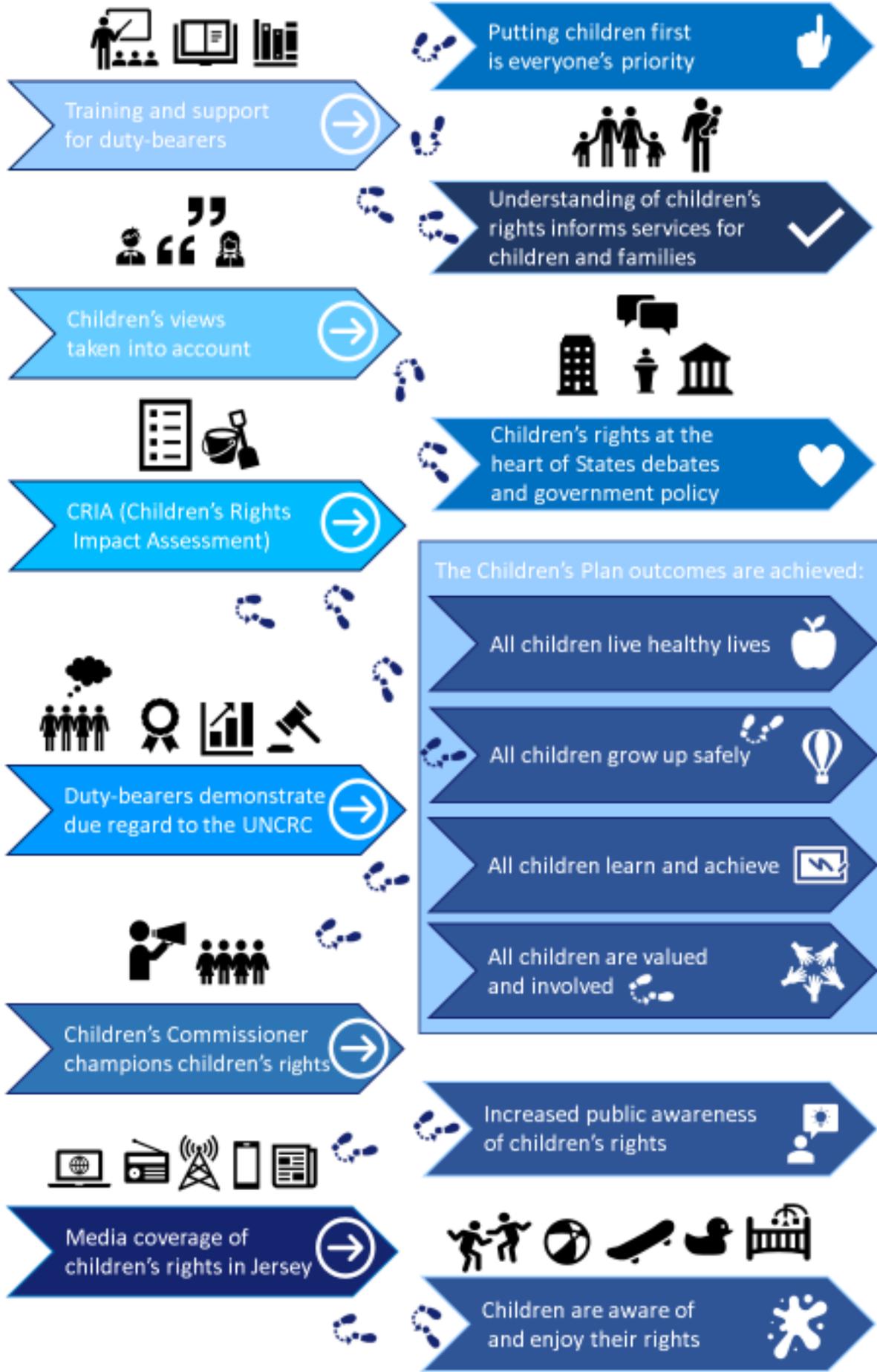
The United Nations Committee on the Rights of the Child. The body which monitors and reports on State Parties’ implementation of the UNCRC and publishes guiding comments on its interpretation and application

UNCRC

The United Nations Convention on the Rights of the Child



Creating a vibrant culture of rights-based practice



Indirect Incorporation of the United Nations Convention on the Rights of the Child

Introduction

Jersey's Minister for Children and Housing has committed to bring forward a draft law which will indirectly incorporate the United Nations Convention on the Rights of the Child (UNCRC) into the Island's domestic legislation.

Before work begins on drafting this new law, we want to test its key features through public consultation. This will help us to ensure the law will provide a strong foundation to support the progressive realisation of children's rights in Jersey.

This consultation guide describes how the law will place a duty to have 'due regard' to the UNCRC on various public authorities, in relation to the performance of their functions.

How to take part in this consultation

Please read this consultation guide before responding to the consultation questionnaire. This will ask for your views about who and what the law will apply to, when it will come into force and how it will help to bring about culture change in relation to children's rights.

We will also be holding two public drop-in sessions at Jersey Library, please see details below.

How to contact us

If you would like to contact us about any aspect of this consultation, please use the following details:

Email: uncrc@gov.je

Online: www.gov.je/consultations

Post: Indirect Incorporation of the UNCRC – Public Consultation
Strategic Policy, Planning and Performance
Government of Jersey
19-21 Broad Street
St Helier
Jersey
Channel Islands
JE2 3RR

Timeline

- **Consultation opens:** Wednesday 20 November 2019
- **Public drop-in:** Tuesday 17 December 2019 – 5:00 – 7:00pm at Jersey Library
- **Public drop-in:** Wednesday 18 December 2019, 12:00 – 2:00pm at Jersey Library
- **Consultation closes:** Tuesday 11 February 2020



Ambition for indirect incorporation of the UNCRC

Jersey's children and families are impacted by government policy, legislation and the day-to-day practices of service providers. By indirectly incorporating the UNCRC into Jersey law, our ambition is to advance a significant culture-change across the children's system. This will be achieved by cultivating a vibrant culture of rights-based practice, in which consideration of children's rights is paramount.

The introduction of a duty to have due regard to the UNCRC will transform Government policy-making and political debate, establishing the Island as a world leader in how it fulfils, protects and respects children's rights. An infographic showing how we hope indirect incorporation of the UNCRC will contribute to achieving the desired culture change, appears on page 3.

Summary of proposed model of indirect incorporation

The model of indirect incorporation centres on introducing the law in three phases:

- **Phase 1** identifies Ministers, Senators, Deputies, Constables and the statutory bodies listed in Standing Order 19,¹ as duty-bearers who will be required to have due regard to the UNCRC when developing policy, legislation, propositions or amendments
- **Phase 2** extends Ministers' Phase 1 duty to cover all their duties and powers
- **Phase 3** expands the definition of duty-bearers to include relevant public authorities that provide key functions or services to children and families.

An overview of the proposed model of the indirect incorporation law appears in Figure 1 below.

Two core principles

The model of indirect incorporation being proposed is based on two core principles:

Entitlement to lodge propositions / amendments should equal a duty to have due regard
Decisions made in the States Assembly define Jersey's laws, public spending and key government programmes. The right of every elected States Member (and the bodies listed in Standing Order 19) to seek support for their proposals, is a key feature of Jersey's parliamentary system. The indirect incorporation law will therefore establish that all those with the right to lodge a proposition or amendment for debate, will have a duty to have due regard to the UNCRC in doing so.

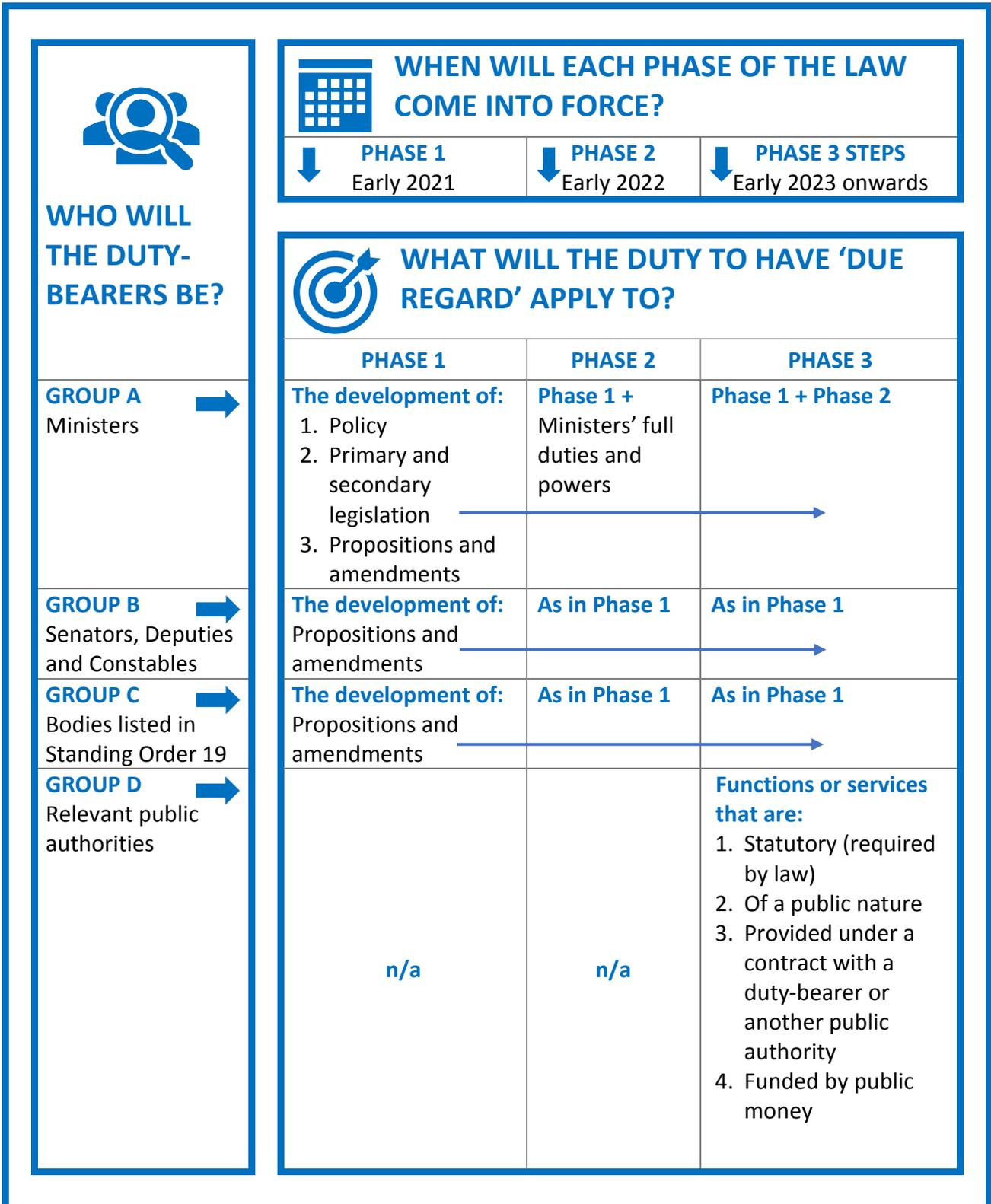
Although most of Jersey's policies and laws are developed by Government Departments on behalf of Ministers, in recent years backbenchers and Scrutiny Panels have also lodged successful propositions to amend local laws which directly affect children. This feature of our democratic system underlines the importance of identifying all elected Members of the Assembly as duty-bearers under this law.

Authentic, sustainable culture change is more likely to be achieved incrementally
Phasing-in the law will make the best-use of limited government resources to prepare duty-bearers, and those who support them, to comply with the duty to have due regard to the UNCRC. Phase 3 will be divided into steps, so groups of similar public authorities (E.g. Parishes or voluntary sector organisations) can receive tailored training and support before becoming legal duty-bearers.

¹ **Standing Order 19 - Who can lodge a proposition:** (a) a member of the States, in his or her own right; (b) the Council of Ministers; (c) any Minister; (d) the Privileges and Procedures Committee; (e) the Public Accounts Committee; (f) a scrutiny panel; (g) the chairmen's committee; (h) any other committee or panel established by standing orders (apart from a committee of inquiry); (i) the Comité des Connétables; (j) the States Employment Board.



Figure 1: Who? When? What? Overview of the proposed model of the indirect incorporation law



Human Rights, Children's Rights and the UNCRC

Human rights are:

"a universal set of standards based on basic human needs that guarantee freedom, dignity, equality and a fair standard of living for all."



In 1948, the United Nations presented the Universal Declaration of Human Rights (UDHR) which details 30 rights and freedoms that all people are entitled to. The UDHR recognises that children require “special care and assistance” as they are more vulnerable than adults.

The United Nations Convention on the Rights of the Child (UNCRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of all children and young people under 18. The Convention was introduced in 1989 and has been incorporated by a growing number of progressive states to form the foundation of domestic children’s law and practice.

The UNCRC in Jersey

Following the Island’s request, the UK extended its ratification of the UNCRC and two of its Optional Protocols to Jersey in 2014. As a result, the Island is bound to the UNCRC by international law and is subject to the monitoring and reporting processes of the United Nations Committee on the Rights of the Child (the UN Committee). Jersey also has an obligation as a State Party to continue to pursue measures to further realize children’s rights and implement the UNCRC.

In 2018, the Council of Ministers agreed to adopt an incremental approach to incorporating the UNCRC into domestic legislation, beginning with a due regard model of indirect incorporation. As part of the priority to put children first, the *Proposed Government Plan 2020-2023* includes a commitment to:

Bring forward primary legislation for indirect incorporation of the United Nations Convention on the Rights of the Child, which will establish a requirement for the Government to consider and safeguard children’s rights in relation to policy, legislation and practice.

Ministers have also committed to review the option to directly incorporate the Convention, once they have considered the findings of the independent review of the alignment of Island’s legislation with the UNCRC. This review has been commissioned and is expected to be completed by mid-2020.

Indirect incorporation of the UNCRC in Jersey law will establish a robust foundation for progression to direct incorporation, if this is approved by Ministers and the Assembly.

Implementation and models of incorporation

Article 4 of the UNCRC binds State Parties to, “*undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.*”

The United Nations Committee on the Rights of the Child (the UN Committee), which provides guidance regarding the interpretation and application of the UNCRC, state that:

*...implementation is...action to ensure the realization of all rights in the Convention for all children... and has welcomed the, “**incorporation** of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments.”*

There are two key models of incorporation:

- **Direct incorporation** relies on the retrospective enforcement of convention rights through the courts. Its aim is to provide rights-holders with a legal remedy for the violation or infringement of their rights where State Parties have committed to act compatibly with the convention.
- **Indirect incorporation** is a proactive approach which relies on embedding consideration of convention rights as an aspect of policy development. The aim of this approach is to develop cultural acceptance of convention rights.



