

Children's Rights in Jersey

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

Public Consultation Findings and
Recommendations

Strategic Policy, Planning and Performance

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Glossary

You may find some of the terms in this document 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



Indirect Incorporation of the UNCRC: Public Consultation Findings and Recommendations

Executive Summary

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 wanted to test its proposed key features through public consultation to ensure it will provide a strong foundation to support the progressive realisation of children's rights in Jersey. A 12-week consultation was held between 20 November 2019 and 14 February 2020, which asked respondents to consider 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. This report addresses each of these areas in turn.

Overall, the majority of consultation respondents were supportive of the proposed model for indirectly incorporating the UNCRC into Jersey law. A total of 29 responses were received in writing and through the online questionnaire. Approximately 100 children and young people participated in the consultation activities held in schools and during a meeting of the Student Council Network. Analysis of the submissions received, suggests that no significant amendments are required and that the model is therefore fit for purpose. It is therefore recommended that Ministerial assent should be sought to prepare law drafting instructions and commence the legislative drafting process.

“UNICEF UK welcomes the proposed model of indirect incorporation as a big step to advance implementation of the CRC into domestic law, policy and practice. Indeed, the proposed model is very ambitious and goes further than other countries.”

Dragan Nastic, UNICEF UK

“This is a massive step for the island and it is so important we get this right to protect children and families across the island.”

Rob Crawford, Centre Point Trust

“It is good to see that proposals are now in place in relation to respecting children and their rights and moving forward I hope that there will be a significant change in how matters are dealt with when children are involved.”

Anonymous respondent #12

“We welcome this step forward in embedding children's rights considerations into decision making in Jersey, however this is the first step and not the end of the journey. Full and direct incorporation of the UNCRC is necessary to protect, respect and fulfil the rights of children and young people in Jersey.”

Children's Commissioner for Jersey



Background: Human Rights and the UNCRC

In 1948, the United Nations presented the Universal Declaration of Human Rights (UDHR) which detailed 30 rights and freedoms that all people are entitled to. Human rights are defined as:

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

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 / the Convention) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of all children and young people under the age of 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.

Following the Island’s request, the UK extended its ratification of the UNCRC and two of its Optional Protocols¹ 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 *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 before the end of 2020.

Indirect incorporation of the UNCRC into Jersey law will establish a robust foundation for future progression to direct incorporation, if this is approved by Ministers and the States Assembly, is in line with Article 4 of the UNCRC, which binds State Parties to:

...undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.

The UN Committee, which provides guidance regarding the interpretation and application of the UNCRC, states 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.



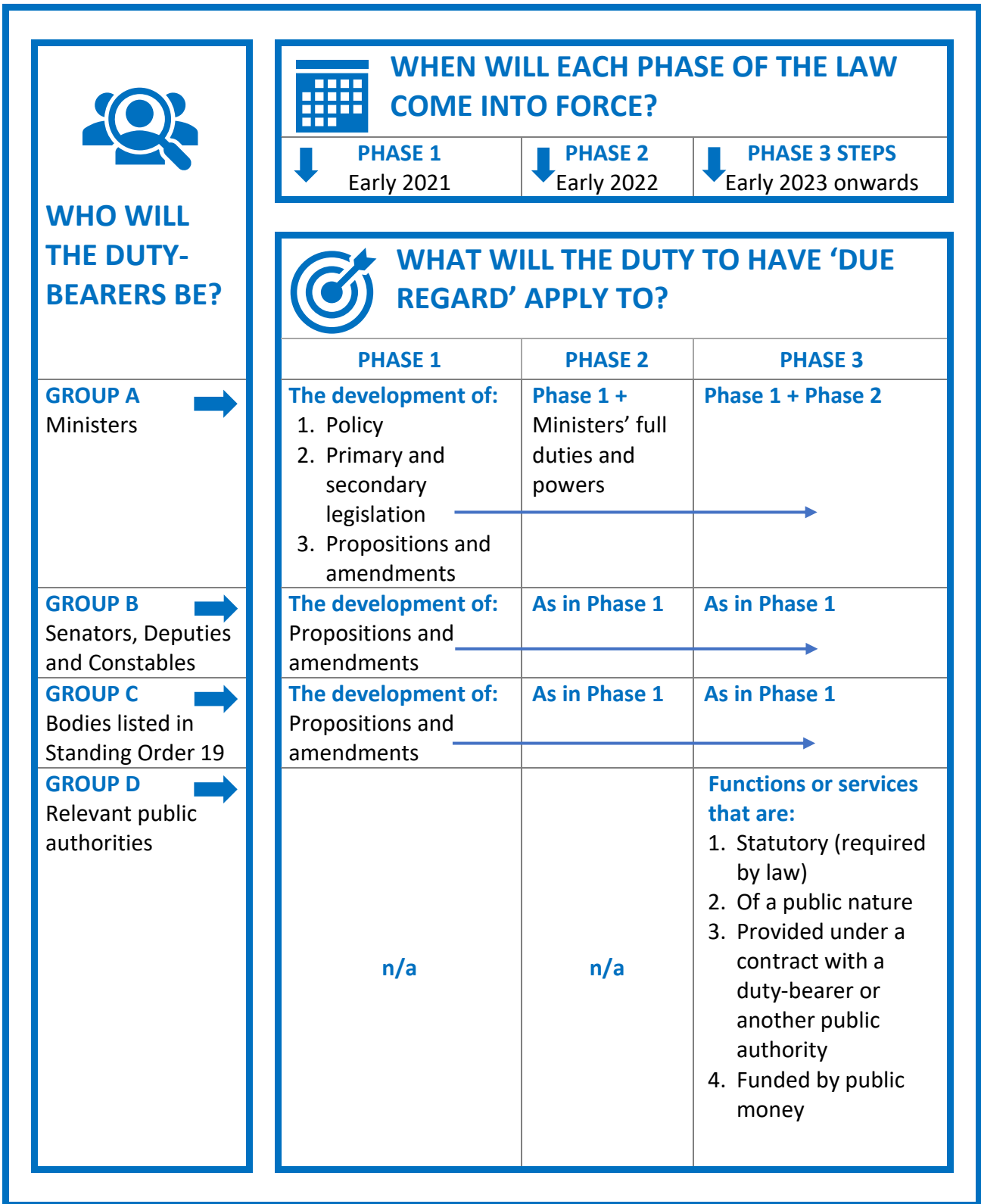


Figure 1: Who? When? What? Overview of the proposed model of the indirect incorporation law



The proposed model of the indirect incorporation law (see Figure 1 above) is based on two core principles:

1. *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.

2. *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. Following Phases 1 and 2, 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.

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 it is hoped indirect incorporation of the UNCRC will contribute to achieving the desired culture change, appears below on page 16.

The consultation process

The Indirect Incorporation of the UNCRC public consultation was launched on 20 November 2019; this date marked both Unicef's World Children's Day and the 30th anniversary of the UNCRC.

A dedicated page was created on the consultation section of gov.je with links to the Public Consultation Guide and the online consultation questionnaire. A new email address was established to receive any enquiries. The consultation was promoted through a Government of Jersey news releaseⁱⁱ and Government social media channels.

During the consultation period, presentations were made to the Student Council Network (the half-termly forum for representatives from all School Councils), students at Hautlieu School and Jersey College for Girls. A joint session to consider the issues covered by the Children's Law Reform and the Indirect Incorporation public consultations was also arranged for care-experienced young people supported by Jersey Cares.

Briefings on the proposed model of the indirect incorporation law were provided for: the Children's Cluster (a group of public authorities and voluntary sector organisations that work with children and families in Jersey); the Comité des Connétables; the Scrutiny Liaison Committee; and, prior to the launch of the public consultation, the Care of Children in Jersey Review Panel.



Two public drop-in sessions were held at Jersey Library on 17 December from 5.00 to 7.00pm on and on 18 December from 12.00 to 2.00pm. Approximately 10 members of the public collected printed copies of the Public Consultation Guide and consultation questionnaire.

On 3 December 2019, an Officer presented the Jersey's proposed model of indirect incorporation at the Rights of the Child (ROCK) UK Conferenceⁱⁱⁱ in Belfast, attended by over 70 government officials, academics and members of the voluntary sector working in the field of children's rights from across the UK and Europe.

Response rates

The online consultation questionnaire was fully completed by 12 respondents and partially completed by 73 others. In 57 of the incomplete responses, none of the consultation questions beyond the section asking them to tell us about themselves (Questions 1-4) were answered, resulting in no data to analyse. The 16 remaining partial responses were analysed alongside with the 12 complete responses, giving a maximum of 28 response to each question.

Only one email was received regarding the consultation. This came from the Office of the Children's Commissioner, attaching their official response to the public consultation which has also been published on the Commissioner's website (see Section 6).

About respondents

18 respondents agreed to be quoted anonymously, three agreed to have quotes attributed to them or their organisation, five respondents did not want to be quoted and two chose not to answer this question.

20 respondents recorded that they were over 18; two were under 18 (and therefore rights-holders under the UNCRC); four preferred not to give their age and two noted that this was not applicable. 22 respondents stated that they live in Jersey; one lived in one of the other Channel Islands; two were from the UK; and three preferred not to say where they lived.

Eleven respondents reported that they worked for the Government of Jersey; four work or volunteer for (or were responding on behalf of) an organisation which provides services for children, young people and families. Five respondents noted that they directly work or volunteer with children and young people. These response options were not mutually exclusive and therefore include some respondents more than once.

Consultation findings

The consultation questionnaire asked respondents to consider 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.

1. Who will the duty-bearers be?

In order to explore levels of agreement with the proposals to identify specific public authorities as duty-bearers under the law, the first section of the questionnaire asked: 'Who will the duty-bearers be?' In the consultation glossary, duty-bearers are defined as:

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*

UNICEF defines duty-bearers as follows:

Those actors who have a particular obligation or responsibility to respect, promote and realize human rights and to abstain from human rights violations. The term is most commonly used to refer to State actors, but non-State actors can also be considered duty bearers. An obvious example is private armed forces or rebel groups, which under international law have a negative obligation to refrain from human rights violations. Depending on the context, individuals (i.e., parents), local



organizations, private companies, aid donors and international institutions can also be duty-bearersiv.

It is proposed that Jersey’s indirect incorporation law should identify four groups of duty-bearers:

- Group A – Ministers and their delegates
- Group B – All Senators, Deputies and Constables
- Group C – Bodies listed in Standing Order 19^v
- Group D – Relevant public authorities

The approach used to identify Groups A, B and C is based on the first core principle underpinning the proposed law:

‘Entitlement to lodge propositions / amendments should equal a duty to have due regard.’

This approach firstly identifies the Council of Ministers, individual Ministers and their delegates - Assistant Ministers and Government Departments as duty-bearers (Group A). To ensure equity within the States Assembly and that children’s rights are not perceived as a matter for the Executive’s consideration alone, the law would also identify all elected Members as duty-bearers (Group B), together with the various boards, panels and committees stipulated in Standing Order 19 (Group C).

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. Although most of Jersey’s policies and laws are developed by Government Departments on behalf of Ministers, in recent years backbench Members 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.

In **Question 5** (see Figure 2 below), respondents were asked about their confidence that the proposed groups of duty-bearers are suitable for achieving the stated policy aim:

The aim of these proposals is to ensure that the policies, laws and practices which affect Jersey’s children and families are shaped by consideration of children’s rights, within a vibrant culture of rights-based practice.

Ten respondents felt that the proposed model was quite suitable or very suitable; five felt that wasn’t suitable or wasn’t at all suitable; 13 respondents were unsure / had no opinion or didn’t answer.

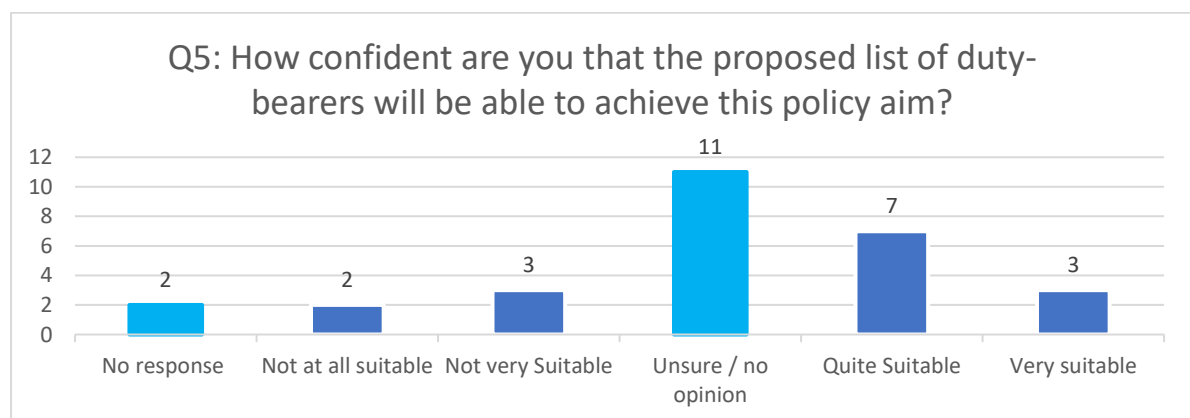


Figure 2: Responses to Question 5



Question 6 asked respondents if there were any public authorities they thought SHOULD be identified as duty-bearers. Two respondents made specific suggestions in answering this question:

“I think that the Jersey Family Advisory Court Service should be identified as a duty bearer as at present I do not believe that they follow the guidelines of the UNCRC. Children need a voice and to be listened to and this currently is not happening in matters of family separation.” (Anonymous respondent #12)

“Police, Safeguarding Board, schools. Actually anyone whom is in direct contact with children for more than 15 hours a week.” (Rob Crawford, Jersey Centre Point Trust)

Other responses took a more general approach:

“We think it is right that the proposed list of duty-bearers is comprehensive. By virtue of ratification, the Jersey Government remains responsible for ensuring the full implementation of the Convention throughout the territory under its jurisdiction and must retain powers to require full compliance with the Convention by all public authorities. See paragraphs 41-44 of the General Comment no 5 published by the UN Committee on the Rights of the Child.” (Dragan Nastic, Unicef UK)

One respondent noted their belief that relevant authorities should come under the law much sooner:

“The development of Policy (Phase 1 & 2) should include representatives of Relevant Authorities and not be restricted to ministers and the executive.” (Anonymous respondent #3)

The proposed legislative model will allow for relevant public authorities to be consulted by Government in the development of law and policy where they are recognised as stakeholders and for duty-bearing authorities to fulfil their duty under Phase 3 of the law in developing their own policies.

10

Unfortunately, not all respondents located the definition of duty-bearers or the list of Standing Order 19 Bodies within the Consultation Guide. Lack of clarity on these definitions shaped the submission made by one anonymous respondent:

“I do not believe there should be any 'duty-bearers'...”

“If a 'duty-bearer' has to go through some kind of tick box exercise before they may bring a proposition to the states, then it would be profoundly unfair to expect assembly members to have to demonstrate this, as it creates an additional barrier in the democratic political process. No all assembly members are legal expert, ergo only positions who have this expertise could be reasonably assumed to be able to pass this hurdle. Ergo ministers and public authorities only. Not the wider assembly, and as for group C, as I don't know who they are I cannot pass comment.”
(Anonymous respondent #17)

There were five responses to **Question 7**, which asked respondents if there were any public authorities they thought SHOULD NOT be identified as duty-bearers. Two respondents thought that some or all members of the States Assembly should not be identified as duty-bearers:

“Any politician.” (Anonymous respondent #7)

“The non-ministerial states members - indeed I would even extend this to all members of the assembly, however we can reasonably assume that the ministers have some governmental team



behind the scenes somewhere advising, so it might be reasonable to assume they can provide such advice...

“That said, all of this adds a lock on our democracy and constrains the political options of our elected representatives’ ability to represent us, by binding us to some arcane legalese, and governmental tick box process. It adds the questions of ‘who reviews the proposition and amendments to ensure compliance’, what if the assembly member disagrees? What if the public disagree or there is a general public mandate to push a piece of legislation that is non UNCRC compliant?”

“Therefore I take issue with the entire concept of a ‘duty-bearer’. (Anonymous respondent #17)

Two respondents felt that the definition of duty-bearers should not be restricted in any way:

“No.” (Anonymous respondent #3)

“There should be no exemption. When private sector is enabled to provide services, run institutions and so on, the State’s obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention is not lessened. See: Committee on the Rights of the Child, Report on its thirty-first session, September-October 2002, Day of General Discussion on “The private sector as service provider and its role in implementing child rights”, paras. 630-653.^{vi} (Dragan Nastic, Unicef UK)

One respondent, who did not want to be quoted, felt that members of the community with serious criminal convictions should be disqualified from being identified as duty-bearers. Under the proposed model of legislation, the status of duty-bearer will only be recognised in relation to specific roles within Government, the States Assembly or civil society, rather than being borne by individuals on a personal basis. It is therefore anticipated that anyone with a serious conviction, especially one concerning children, would already be barred from taking up a role which would also confer on them the responsibilities of a duty-bearer.

In developing the model for this legislation, consideration was given the plans to create a new function within the States Greffe to provide dedicated Officer support for backbench Assembly Members.^{vii} This additional resource will ensure elected members outside of Government can be supported to comply with their proposed duties under this legislation.

Beyond the Members and Bodies of the States Assembly and the Government of Jersey (Groups A to C), a further group of public authorities would also be identified in the indirect incorporation law as Group D duty-bearers, based on the following definition:

Public authorities that are engaged in providing relevant functions or services to children and families about which one or more of the following conditions also apply:

- 1. They are required to exist by law*
- 2. One or more of their functions are required by law*
- 3. They perform functions of a public nature*
- 4. They provide services under a contract with a duty-bearer or another public authority*
- 5. They receive public money*



Question 8 (See Figure 3 below) asked respondents to what extent they agreed or disagreed with this approach to defining public authority duty-bearers. Overall, 14 respondents agreed or strongly agreed with the approach; two strongly disagreed; and 12 were unsure, had no opinion or chose not to answer.



Figure 3: Responses to Question 8

The responses to the group of questions about who the indirect incorporation law should apply to, demonstrate high-levels of support for the groups and definitions of duty-bearers as set out in the proposed model for this legislation.

2. When will each phase of the law come into force?

It is proposed that each Phase of the indirect incorporation law should be brought in via a series of Appointed Day Acts, with each phase building on the previous one, by both extending the scope of the duty and the definition of duty-bearers.

The proposed model centres on introducing a new primary law in three Phases:

- **Phase 1** identifies Ministers, Senators, Deputies, Constables and the statutory bodies listed in Standing Order 19, 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.

This approach draws on learning from Wales, where the duty on Welsh Ministers to have due regard to the UNCRC was introduced in two stages by the *Rights of Children and Young Person's (Wales) Measure 2011*.^{viii} This has also informed our second core principle underpinning the proposed 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.

The Minister for Children and Housing has stated his ambition for Phases 1 and 2 to be enacted before the 2022 general election, beginning with Phase 1 in early 2021 and followed by Phase 2 approximately a year later. Phase 3 would most likely be enacted after the 2022 election, probably in early 2023.



In **Question 9** (see Figure 4 below) respondents were asked to consider the proposed timetable for phasing-in the law. In all, 10 respondents agreed that this timing was about right; four thought it was too fast; five thought it was too slow. Nine respondents were unsure, had no opinion or didn't answer.

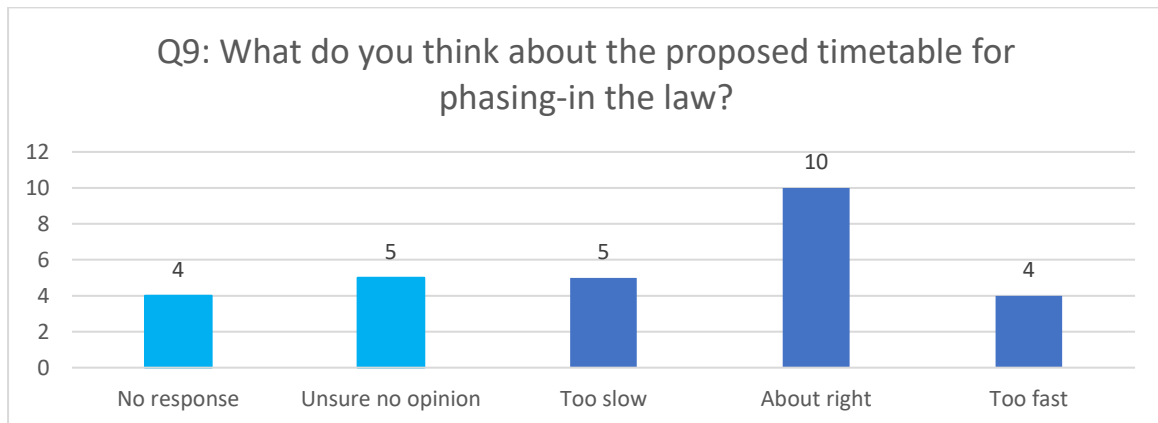


Figure 4: Responses to Question 9

In Phase 2, Ministers' duty to have due regard to the UNCRC would be fully extended so that it applies to all their duties and powers and therefore encompassing everything Ministers **MUST** or **MAY** do.

This element of the proposal was explored in **Question 10** (see Figure 5 below), by asking respondents to state their level of agreement that the maximum extent of the duty falling on Ministers should be introduced across two phases. In all, 11 respondents agreed or strongly agreed with this proposal; three disagreed or strongly disagreed; 14 respondents were unsure, had no opinion or chose not to answer.

As the list of Group D duty-bearers will include a wide range of public authorities with different needs and characteristics, it is proposed that Phase 3 will be rolled-out in a series of steps, so that groups of similar organisations can receive appropriate training and support before becoming duty-bearers at the same time.

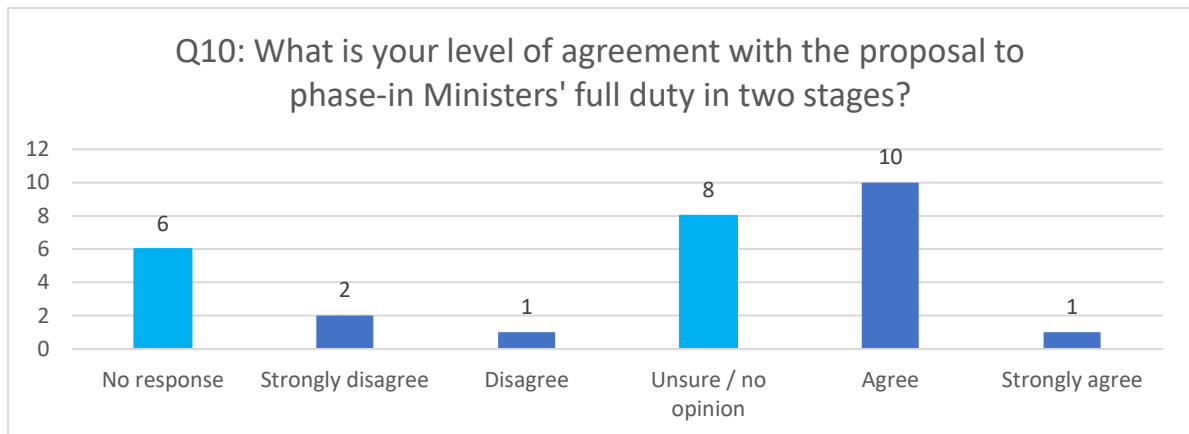


Figure 5: Responses to Question 10

In **Question 11** (see Figure 6 below) we asked respondents about their level of agreement with this proposed approach. 13 respondents agreed or strongly agreed with this strategy; one strongly disagreed; and 14 were unsure, had no opinion or chose not to answer.



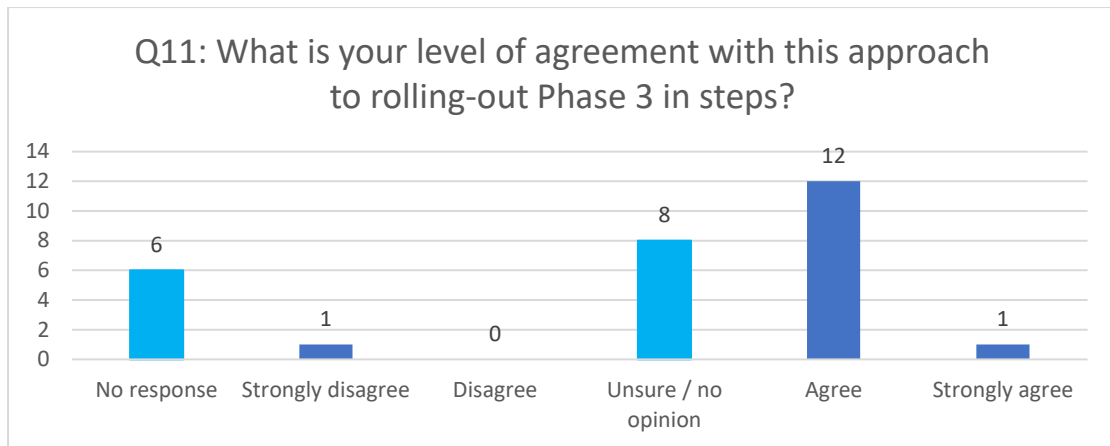


Figure 6: Responses to Question 11

The responses to the group of questions about the recommended pace, timing and phases for introducing the indirect incorporation law, again demonstrate high-levels of support amongst respondents for the proposals for how the law should come into force.

3. What will the duty to have ‘due regard’ apply to?

Question 12 (see Figure 7 below) asked respondents to consider the likely effectiveness of the indirect incorporation law, given the duties, powers and functions to which it would apply. Details of the activities the due regard duty would apply to, and the ways in which duty-bearers would be required to demonstrate their compliance with that duty, were set-out for respondents as follows:

Phase 1:

All duty-bearers will be required to have due regard to the UNCRC and complete a Children's Rights Impact Assessment (CRIA) when developing:

1. Policy
2. Primary and secondary legislation
3. Propositions and amendments for debate in the States Assembly

CRIA is a documented process which is used to identify the potential impacts of a policy or law on children's rights. When lodging propositions and amendments for debate, duty-bearers will be required to publish the CRIA they have developed, so they are available for everyone to read. Only the first stage of CRIA will be required when developing amendments.

Phase 2:

Ministers' duty to have due regard to the UNCRC will be extended to apply to all their duties and powers (everything they MUST or MAY do). CRIA will be optional for the duties added in Phase 2 so Ministers can choose the most appropriate way to demonstrate evidence that they have had due regard.

Phase 3:

Relevant public authorities will be required to have due regard to the UNCRC. As with Phase 2, CRIA will be optional so that public authorities can choose the most appropriate way to demonstrate evidence that they have had due regard.



Eight respondents thought that this model would be quite effective in ensuring that children’s rights are promoted and protected; four thought it wouldn’t be effective or wouldn’t be at all effective; 16 were unsure, had no opinion or chose not to answer. The responses to this question suggest there are concerns that the duty introduced by the law may not translate into meaningful improvements in children’s enjoyment of their rights. It will be important to ensure that this is not the case and that compliance with the due regard duty has a positive impact on children’s lives.

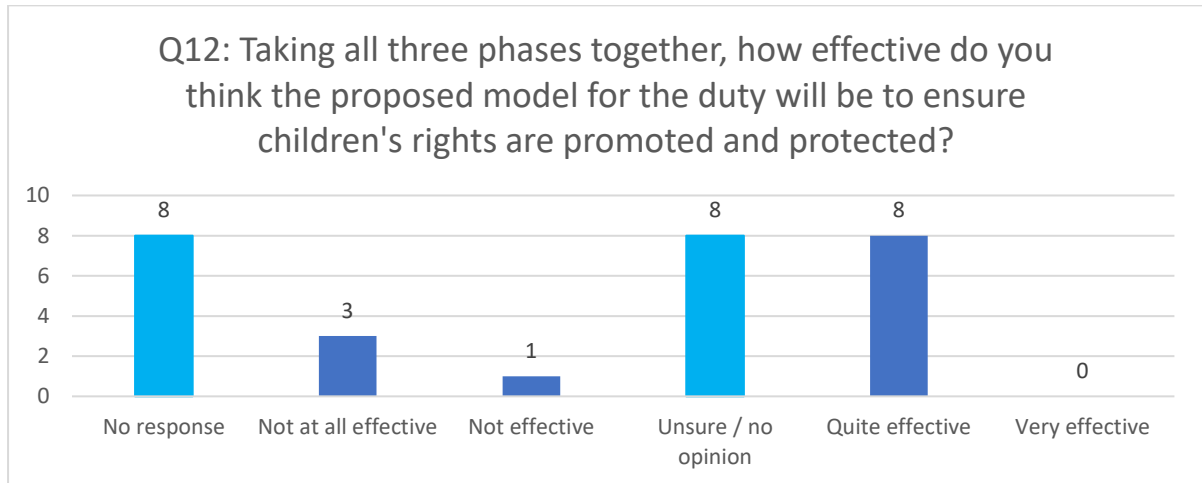


Figure 7: Responses to Question 12

4. How will culture change be achieved?

Question 13 (see Figure 8 below) addressed the potential for the indirect incorporation law to support the creation of a vibrant culture of rights-based practice across the children’s system. A theory of change, setting-out how this can be achieved, is presented as an infographic in Figure 9 beneath. Five respondents were quite confident, four were not very or not at all confident and 19 were unsure, had no opinion or chose not to respond. The range of responses to this question may suggest a circumspect attitude towards the potential for the desired culture change to be achieved through legislation alone.

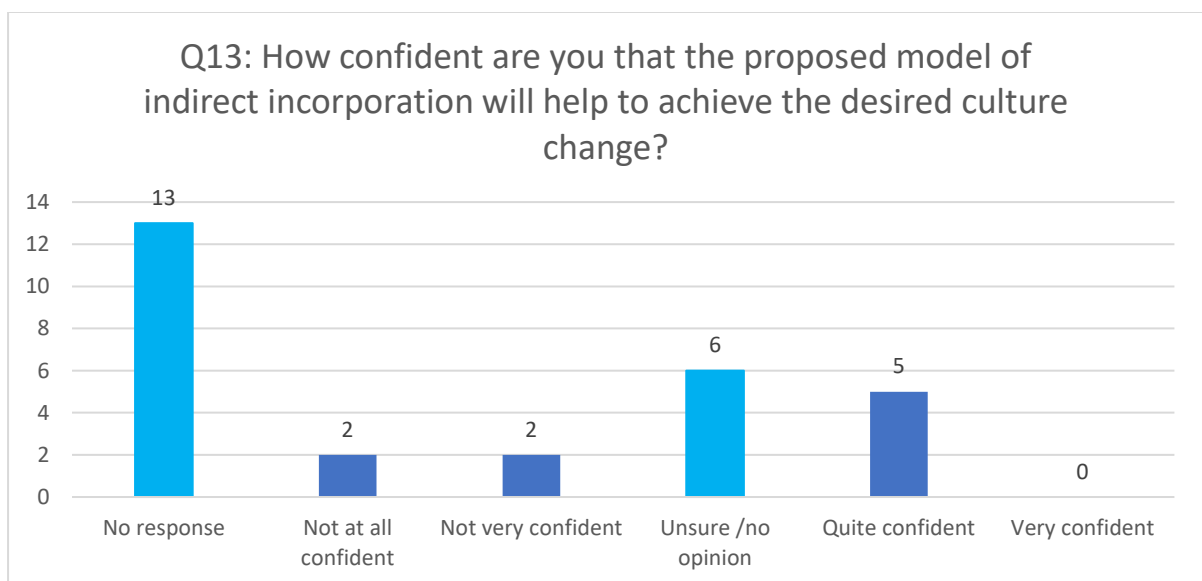


Figure 8: Responses to Question 13



Creating a vibrant culture of rights-based practice

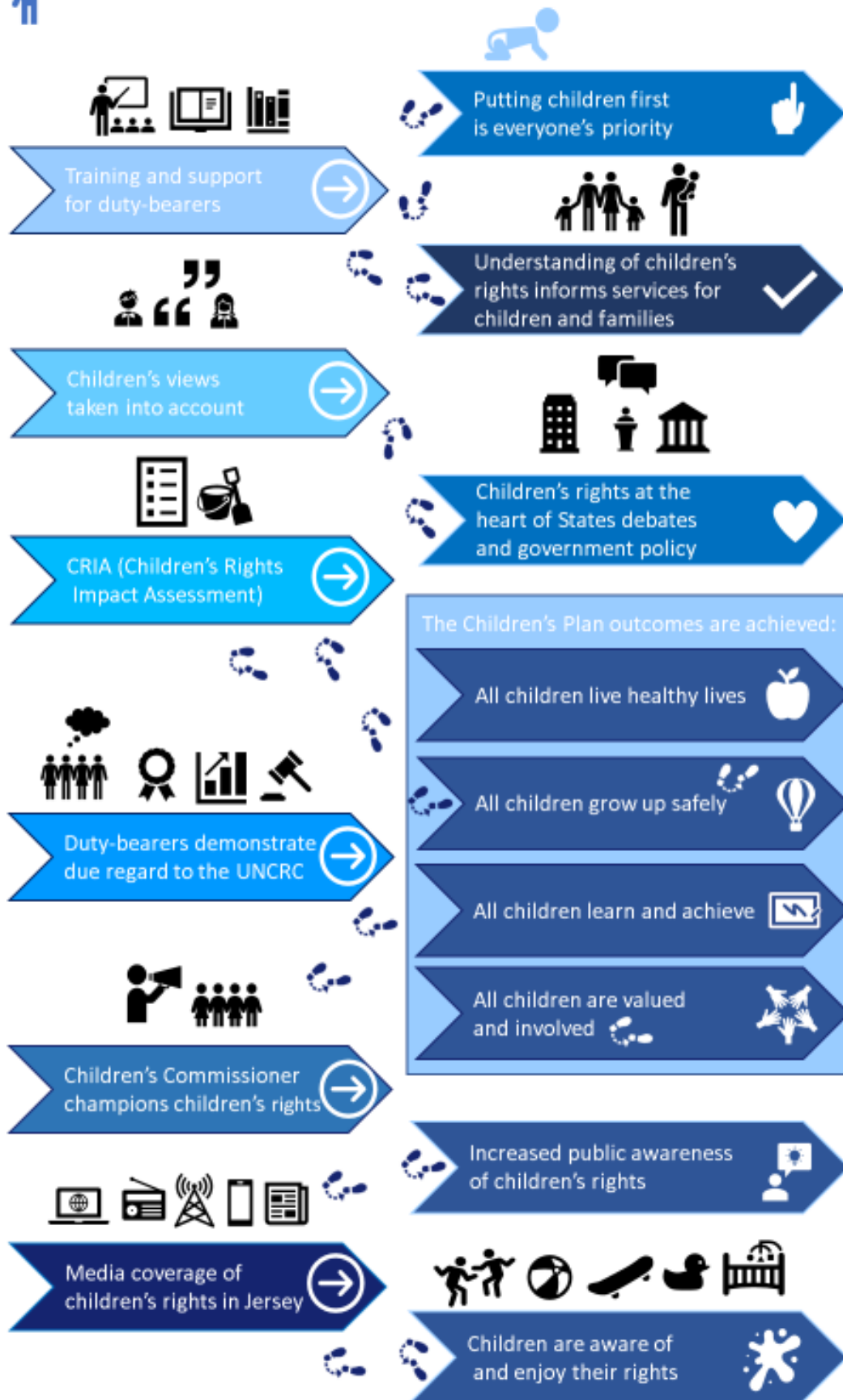


Figure 9: Theory of change for indirect incorporation



5. Additional comments on the proposals

Question 14 provided an opportunity for respondents to add any other comments about the proposals for indirectly incorporating the UNCRC. Ten respondents provided comments in this section (NB: some comments have been edited for length, applicability, language and/or clarity.):

"In my opinion, the public need to be involved in this as it needs to be in the public eye. This needs to be promoted in the correct way as it is highly important for the public's buy in. It also needs to be put around in places of interest such as hospital, doctors, schools, nurseries, youth clubs etc. This is a massive step for the island and it is so important we get this right to protect children and families across the island." (Rob Crawford, Jersey Centre Point Trust)

"UNICEF UK welcomes the proposed model of indirect incorporation as a big step to advance implementation of the CRC into domestic law, policy and practice. Indeed, the proposed model is very ambitious and goes further than other countries.

"Nevertheless, what emerges from UNICEF research is an understanding that children's rights are better protected, in law and in practice, in countries that have given legal status to the CRC via a direct and full incorporation, as defined by the UN Committee, and that have followed this up by establishing the necessary systems to effectively support, monitor and enforce the implementation.

"UNICEF UK encourages the Government of Jersey to continue its journey towards direct incorporation and offers its full support." (Dragan Nastic, Unicef UK)

"It is good to see that proposals are now in place in relation to respecting children and their rights and moving forward I hope that there will be a significant change in how matters are dealt with when children are involved." (Anonymous respondent #12)

"I think the success will very much depend on individual's commitment and cross-agency communication." (Anonymous respondent #13)

"The government is not open and transparent in these basic requests [FOI requests], or when it is it's very slow, it therefore does not give members of the public confidence when it comes to something much larger that it will be any better, so confidence is low on this making a cultural change at the moment, this despite the efforts of the Children's Commissioner who at least does what she says she'll do. Whether you agree with her or not at least she practices what she preaches in her area of Children. Perhaps it is because she is not part of Government!"
(Anonymous respondent #14)

"I think that we can't on the one hand do this but on the other hand allow a minimum wage and housing situation that means children live in poverty in unsuitable accommodation e.g. one room." (Anonymous respondent #16)



"...If it's a situation where every proposition or amendment first has to pass the 'child's rights tick box', then this is adding additional layers of complexity and bloat to an already complicated enough process in our assembly. It adds the questions of 'who reviews the proposition and amendments to ensure compliance', what if the assembly member disagrees? What if the public disagree or there is a general public mandate to push a piece of legislation that is non UNCRC compliant?"

"Just because other states have adopted the UNCRC doesn't mean that we should or need to."

"As I have articulated above, I have little issue with the core concepts of human rights, and specific articles that exist within the UNCRC, given both share many overlaps it is the minority of points that I disagree with."

"What we as an Island need, is not some subscription to an international document, but rather to understand what the issues are for families with children in our society. Do they struggle because of finances? Because of commutes to school and back? Because there is a lack of educational opportunities? Or are we doing all of those things, but failing people in the care of the state?"

"This is what is needed from a public policy perspective, not legislation. Not a subscription to some airy-fairy ideals that melt away in the fact of the ground dirt reality of everyday life."

"We should pick and choose what works for our society." (Anonymous respondent #17)

"That part of the process is that children understand that the rest of the population have rights too and that they are not exclusively allowed to do as they please and say what they please to whoever because it's their 'right'. Children are frequently ready to shout about their rights but this must not be at the expense of everyone else's. That is not how society should be developing, it helps no one and certainly doesn't help the children." (Anonymous respondent #18)

Consent was not given for two of the responses made in this section to be quoted directly. The first of these comments conveyed a brief positive assessment of the proposed model of legislation. The second expressed a view that the emphasis of the law should be on families rather than children, with specific concern that more should be done to support families to stay together. This issue of children being separated from their families is specifically addressed by Article 9 of the UNCRC and will therefore need to be considered by duty-bearers in giving due regard to the Convention.

The key theme emerging from the comments made by respondents was one of concern about the need for a consistent and proportional approach to indirect incorporation of the UNCRC, both within the machinery of Government and across the children's system as a whole. Some respondents referred to the Human Rights (Jersey) Law 2000^{ix} and their anticipation that this legislation would introduce a similar requirement to act compatibly with the UNCRC. This would not in fact be the case, as due regard is defined as:

A balanced consideration of all relevant issues, including children's rights.

Under an indirect incorporation law, duty-bearers would only need to demonstrate that they have taken children's rights into account when undertaking certain activities. The introduction of a duty to act compatibly with the Convention would form part of any future direct incorporation law. The two



principal models of incorporation are defined as follows:

- **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.

Responses to the consultation demonstrated that there is not yet a universal understanding of Jersey's obligations as a State Party to the UNCRC or the Political commitments which have been made to bring forward indirect incorporation and reconsider direct incorporation. As such, the context in which the proposed legislative model of indirect incorporation has been developed was not fully recognised.

6. Response from the Children's Commissioner for Jersey

During the consultation period, the Commissioner for Children and Young People in Jersey published her official response to the proposed model of indirect incorporation^x. A response to the consultation questionnaire was not received. The Commissioner's published response discusses the proposed legislative model and raises a number of key points; a summary of these points and clarifications where applicable, is set out below:

- 1) The Government of Jersey's plans to indirectly incorporate the UNCRC are welcome
- 2) A call for the Government of Jersey to indirectly and directly incorporate the UNCRC into Jersey law, as the proposed legislation, "falls short of the requirements" set out by the UN Committee

Ministers have 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 will take place before the election in 2022.

- 3) Plans for all propositions debated by the States Assembly to require a CRIA, are welcome
- 4) A call for Children's Rights Impact Assessments (CRIAs) to be mandatory for "all those acting on behalf of the State" (with specific reference to their applicability to all Government Departments); undertaken with reference to recognised best practice; and for all CRIAs to be published

It is intended that the CRIA process will apply to all Ministers and therefore all Government Departments operating on their behalf, in accordance with the scope of each Phase of the law. CRIAs will not ordinarily be published whilst a matter remains exempt as policy under development. Once new policies are implemented, it is anticipated that the accompanying CRIA could then be published.

- 5) A call for the CRIA process to, "sit alongside an effective participation strategy to outline how and when children and young people are engaged with, and should be co-produced and reviewed regularly by children and young people to ensure it is and remains fit for purpose."

A participation strategy is being developed by the Government of Jersey to ensure it engages with children and young people in sustainable and appropriate ways. This strategy will support all those seeing to take into account the views of children and young people when developing law and policy under the indirect incorporation law.

- 6) A call for training and support to be provided to support consideration of Children's Rights



- 7) **A call to understand more about how the views of children and young people will be captured and access to reliable data ensured**

A package of training and support will be made available for duty-bearers and their delegates. This will include ideas for taking the voice of the child into account and making use of existing data from local, national and international sources.

- 8) **A call for the completion and publication of CRIAs to be mandatory for Ministers in Phase 2**

Phase 2 will extend the scope of the due regard duty to encompass the full duties and powers of Ministers. As a policy development tool, CRIA is resource intensive, meaning it will not be feasible within a small Government for every action and decision taken by a Minister or their delegate to be accompanied by a CRIA. A key feature of the due regard model is considered to be the potential for compliance with the duty to be evidenced in a range of ways. Where CRIAs are undertaken in Phase 2, these will normally be available for publication.

- 9) **A call for the due regard duty falling on public authorities in Phase 3 to be “be accompanied by robust guidance, and clear oversight mechanisms” if CRIAs will not be mandatory for these duty-bearers**

- 10) **Concern that the optional CRIA process in Phase 3 will lead to inconsistent practice and a proliferation of differing templates**

Relevant public authorities will be provided with training and resources, including a CRIA template to support their compliance with the due regard duty. Reporting requirements for duty-bearers will form part of the Children’s Rights Scheme which will be stipulated by the primary law.

- 11) **Support for the ambition for achieve culture change**

- 12) **A call for clarification regarding the definition of public authorities that will be used in identifying the public authorities who will become duty bearers**

This issue will be addressed during the law drafting process.

7. Engagement with children and young people

Effective engagement and participation with children and young people will be a key feature of the Children’s Rights Impact Assessment (CRIA) process and will help to determine the effectiveness of the indirect incorporation law. Engagement with children and young people during the consultation centred on asking them to consider some of the issues connected to the identification of duty-bearers and the way in which they think duty-bearers should listen to and involve them.

Presentations were made to the Student Council Network (the half-termly forum for representatives from all School Councils), and groups of students at Hautlieu School and Jersey College for Girls.^{xi} A joint session to consider the issues covered by the concurrent Children’s Law Reform^{xii} and the Indirect Incorporation public consultations was held with a group of care-experienced young people supported by Jersey Cares,^{xiii} although this session primarily focussed on Children’s Law Reform.

Children and Young People were invited to respond to the following questions:

1. **Who should have to consider children’s rights as part of their work?**
2. **How should they listen to and involve children and young people?**
3. **How can the School Council Network and your School Council help duty-bearers to consider children’s rights?**

The responses to these questions have been collated and presented as a word clouds (see Figures 10, 11 and 13 below) to demonstrate the frequency with which specific ideas were identified by the children and young people we engaged with.



people. The Network meets six times each year and comprises representatives from every school council. This model provides a means for issues affecting children to be shared with the Network and then onwards to schools for further consideration and debate. It is expected that the requirement to develop of CRIAs will result in an increased number of requests to present to the Network once the legislation is enacted.

A Children’s Rights Scheme will be developed to support compliance with the indirect incorporation law, including guidance on how best to engage with children and young people. The responses received as part of this consultation will be used in drafting the Scheme to ensure the voices of children and young people have been considered.

8. Conclusion and Recommendations

The development of the proposed model of indirect incorporation, required a bespoke approach based on the unique nature of Jersey’s legislature and the Island’s system of Ministerial Government. Overall, the majority of consultation respondents were supportive of the proposals for 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. Analysis of the submissions received, suggests that no significant amendments are required and that the model is therefore fit for purpose. It is therefore recommended that Ministerial assent should be sought to prepare law drafting instructions and commence the legislative drafting process.

Endnotes

ⁱ Optional Protocol to the Convention on the Rights of the Child (the involvement of children in armed conflict) (2000); Optional Protocol to the Convention on the Rights of the Child (the sale of children, child prostitution and child pornography) (2000).

ⁱⁱ [News release 20 November 2019 - Jersey Putting Children First campaign](#)

ⁱⁱⁱ [2019 ROCK Conference presentations now available](#)

^{iv} [Gender Equality: Glossary of Terms and Concepts](#) p.14

^v [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.

^{vi} [United Nations Committee on the Rights of the Child: Report on the thirty-first session 16 September – 4 October 2002](#) pp: 145 - 158

^{vii} [GOVERNMENT PLAN 2020–2023: FURTHER INFORMATION ON ADDITIONAL REVENUE EXPENDITURE AND CAPITAL AND MAJOR PROJECTS EXPENDITURE](#) p.93

^{viii} [Proposed Rights of Children and Young Persons \(Wales\) Measure 2011](#)

^{ix} [HUMAN RIGHTS \(JERSEY\) LAW 2000](#)

^x [Children’s Commissioner for Jersey - Indirect Incorporation of the United Nations Convention on the Rights of the Child: Consultation Response](#)

^{xi} All secondary schools and colleges were offered a session about the consultation. The majority of primary schools were represented at the Student Council Network.

^{xii} [Children’s Law Reform Public Consultation](#)

^{xiii} [Jersey Cares](#)

