



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

List of Issues - Eighth periodic report of the United Kingdom, International Covenant on Civil and Political Rights

Submission to the United Nations Human Rights Committee

About the Office of the Children's Commissioner for Jersey

Established by the Commissioner for Children and Young People (Jersey) Law 2019, the Children's Commissioner for Jersey is the independent holder of the public office responsible for promoting and protecting the rights of all children and young people in Jersey who are:

- Under the age of 18;
- Under the age of 25, if they have a disability, have been care experienced or have been sentenced, or held in custody, under the Young Offenders Law;
- Placed off-island for their care or treatment.

This is the first time that the Office of the Children's Commissioner for Jersey (OCCJ) is submitting an alternative report to the Human Rights Committee.

About the Bailiwick of Jersey

The Bailiwick of Jersey (hereafter "Jersey") is part of the Channel Islands which form part of the British Isles of the United Kingdom (the "UK"). Constitutionally, Jersey is classified as a Crown Dependency of the UK, since the Island's relationship stems from the sovereignty of the British Crown, as opposed to the UK Parliament or HM Government. In practice, this gives the Island constitutional rights of self-government and judicial independence.

Jersey is not part of the UK and is not represented in the UK Parliament. By charter and convention, the UK Parliament does not legislate for the Island without consent. However, the UK Government, on behalf of the Crown, does retain formal responsibility for the Island's defence and, to some extent, its foreign affairs.

Jersey can negotiate and enter into international treaties in its own right in certain circumstances. This is subject to receiving formal permission from the UK Government on behalf of the Crown. The majority of international treaties and associated protocols, such as the International Covenant on Civil and Political Rights, are extended to the Island by the UK at the request of the Government of Jersey.

Response to List of Issues

In the remit of its mandate, with this submission, the OCCJ would like to inform the Human Rights Committee of important concerns it has around the minimum age of criminal responsibility and the youth justice strategy for Jersey as they relate to the List of Issues published. In doing so, the OCCJ once again underlines that these concerns are in respect to Jersey (rather than the UK) and urges the Human Rights Committee to make recommendations with specific mention of Jersey, so as to assist with the important work of effecting change on the ground.

Minimum age of criminal responsibility

In Jersey, under the Criminal Justice (Young Offenders) (Jersey) Law 2014 the age of criminal responsibility is set at 10¹, falling significantly below the Committee on the Rights of the Child's recommendation of 14, as set out in their General Comment No 24; and out of step with the position in many European nations.

The Attorney General of Jersey has issued guidance on the prosecution of offenders under the age of fourteen years², which states the following:

“Although the age of criminal responsibility remains 10 years in Jersey, henceforth I direct:

- 1. That in relation to children aged 10 or 11 years prosecution should only occur in the most exceptional of cases and only with my consent.*
- 2. In the case of children aged 12 or 13 years there should be a presumption against prosecution and prosecution should only take place with my consent or the consent of a Crown Advocate or Legal Adviser from my Department.”*

However, the view of OCCJ is that guidance is an insufficient safeguard to these important rights, and the minimum age of criminal responsibility should be raised by law in line with international minimum standards. Moreover, this guidance does permit prosecution of children as young as 10, albeit in exceptional circumstances.

In 2017 the Independent Jersey Care Inquiry³ (IJCI) published its findings and recommendations and the Government of Jersey accepted all of the recommendations. The IJCI set out 8 lessons to be learned from the failures of the past, which includes: *“Stay connected. Jersey must ensure that child care and youth justice legislation, policy and practice are not only compliant with current standards in the developed world, and with ECHR and with UNCRC principles, but also that legislation policy and practice are regularly being informed and evolving in line with research and developments.”*⁴

In May 2019, the Government of Jersey published an independent review of the Jersey Youth Justice system⁵, which it commissioned in response to a recommendation of the IJCI that *“the youth justice system move to a model that always treats young offenders as children first and offenders second”*.⁶

¹ [Article 2, Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#)

² [Attorney General's Direction. The conduct of Parish Hall Enquiries. Supplementary Direction 3/2016. Prosecution of offenders under the age of fourteen years. \(2016\)](#)

³ <http://www.jerseycareinquiry.org/about-us>

⁴ [IJCI Executive Summary, Lessons to be learned, para:12.10, pg. 55](#)

⁵ [Jersey Youth Justice Review](#)

⁶ [IJCI Executive Summary, Recommendation 5: Legislation, para: 13.15, pg. 59](#)

The independent review states that: “Given that a review of the age of criminal responsibility is scheduled to take place in 2021 and the Independent Care Inquiry has requested that consideration be given to developing a welfare-based system of youth justice, we would recommend that the two issues be considered together. The terms of reference of the 2021 review should be widened to include an exploration of how a move to raise the age of criminal responsibility could be supported by an appropriate, welfare-based model that protects children’s rights via appropriate judicial oversight.”

To the best of our knowledge no such review of the age of criminal responsibility has taken place and there have been no firm commitments to consider legislation to raise the minimum age of criminal responsibility.

The OCCJ therefore urges the Human Rights Committee to recommend that Jersey raises the minimum age of criminal responsibility to at least 14 years of age.

Youth Justice Strategy

The OCCJ has welcomed recent developments by the Government of Jersey to revitalise the development of a youth justice strategy, which was recommended in the 2019 independent review of youth justice referenced above. We were heartened to see in that draft strategy a clear shift in focus for the youth justice system towards a more welfare-based, child-centred approach. In this context, it is particularly important to recall that the Committee on the Rights of the Child, in their most recent Concluding Observations to the UK State Party in June 2023, specifically in the context of Jersey urged, *inter alia*, the development of a child justice strategy.⁷ However, that strategy remains in draft form and contains no firm commitment to raise the minimum age of criminal responsibility.

It should be further noted that there has recently been a change of Government in Jersey, and as such, at the time of the present submission, the new Government’s position on both the youth justice strategy and the minimum age of criminal responsibility are unknown.

The OCCJ therefore urges the Human Rights Committee to recommend that Jersey adopts a youth justice strategy in line with the recommendations of the Committee on the Rights of the Child without delay.

Conclusion

The OCCJ recommends that the Human Rights Committee in its Concluding Observations to the UK specifically requests the Government of Jersey to:

- *commit to increasing the minimum age of criminal responsibility in line with the minimum international standards, to at least 14;*
- *commit to bring forward a youth justice strategy focused on developing a welfare-based, child-focused youth justice system in line with international standards;*
- *report on a timeframe for these commitments to be realised.*

**Office of the Children’s Commissioner for Jersey
February 2024**

⁷ CRC/C/GBR/CO/6-7 at para 54 (k).