



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

### **Draft Covid-19 (Mental Health) (Jersey) Regulations 202-**

The Office of the Children's Commissioner has not been consulted with regard to this amendment and as a National Human Rights Institution I feel obliged to provide formal advice.

The Draft Covid-19 (Mental Health) (Jersey) Regulations will significantly weaken a number of protections in law for people with mental health issues who may be deprived of their liberty. I acknowledge that in pursuit of protecting each individual's right to health, particularly with concerns around the health of professionals and the impact of staffing levels due to the ongoing public health emergency, a difficult balancing act may be required however human rights protections are fundamental and must consistently be protected in times of crisis and of calm. Human rights provide a robust framework in order to balance these protections to provide a proportionate response.

I welcome the protections in Regulation 1 that the amendment can only apply in an 'extraordinary period' as declared by the Minister, and only when proportionate and necessary for the specified reason that the Covid-19 outbreak is disrupting mental health services. The emergency period must only be for as long as is absolutely necessary, and must be subject to continuous review, including the extension provided in Regulation 1 (3)(b).

Regulation 2 sets out that the timeframe for assessment following an emergency admission will be extended from 48 to 72 hours. The additional time of uncertainty can increase distress and therefore assessments should be pursued as efficiently as possible, but without compromise on the quality of assessment which respects the individual's rights. This includes contact with family members and others to support them through an uncertain time, and access to advocacy services to support their rights.

The assessment process itself includes a number of safeguards which are subject to change under the proposed law. This includes the provision that where patient must be admitted to a hospital or another appropriate place of treatment due to representing a potential danger to their own safety or another person's safety, that admission may be made by a registered medical practitioner should an approved practitioner not be available. Assessments must be completed by individuals who are appropriately qualified to balance an individual's right to safety, and the highest attainable standard of health with their liberty and autonomy. Further safeguards are therefore required, and these assessments must be grounded in human rights, as well as being informed by medical expertise in order to appropriately assess what is in the individual's best interests.

The provision which would provide for the compulsory admission to hospital to be approved by one instead of two registered medical practitioners where it is determined that the requirement for two recommendations is 'not reasonably practicable or would involve unreasonable delay' substantially weakens rights protections for individuals. This is further compounded by the provision that the registered medical practitioner must be an approved practitioner unless it would create 'unreasonable delay'. Every child, young person and adult has the right to not be deprived of their liberty, and any interference must be necessary, proportionate, and non-discriminatory and in

accordance with law. The proposed amendment does not provide for a test of necessity, but of reasonableness, which risks placing service delivery concerns ahead of an individual's human rights.

I have similar concerns over the changes to checks and balances provided by a second medical opinion. These proposals seek to allow the second opinion approved doctor to consult only one person (instead of 2) when providing a certificate under Article 41 allowing treatment to be given. The safeguards again are being diluted based on what is 'reasonably practicable or would involve unreasonable delay', which is not a high enough threshold to sufficiently protect individual's rights. The combination of these measures could mean that young people are assessed by a non-approved practitioner, with a second opinion from only one approved practitioner, which significantly weakens protections for individuals to an unacceptable level and must be revised.

Further, the safeguards provided within Articles 62-67 and Article 69 of the Mental Health (Jersey) Law 2016 will be substantially reduced under these provisions. The current law provides that 2 medical practitioners, one of whom is an approved practitioner, must provide evidence to the court to proceed. The proposals would revise this to one registered medical practitioner who must, where practicable, be an approved practitioner. This is again provided for on the basis of avoiding 'unreasonable delay' and therefore is again focussed on service delivery at the cost of rights protections. The range of actions the court can take includes making a decision to remand a young person for treatment, which engage a wide range of rights including the right to not be deprived of their liberty; the right to have their best interests as a primary consideration in all decisions which affect them and the full complement of rights as set out in international law. This includes the United Nations Convention on the Rights of the Child (UNCRC) which was extended to Jersey in 2014. It also includes the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which were extended to Jersey in May 1976.

The provisions to extend the period from 7 days to 28 days for an individual to be transferred to an approved facility is extremely concerning and significantly infringes their right to the highest attainable standard of health, including access to healthcare. It is unacceptable for a young person, or indeed any individual, who is need of health care and support to be unable to access this, and the delay in accessing appropriate support could heighten their distress and further compound their health issues.

I am clear that this amendment would significantly impact young people's rights, as well as adults' rights, and place system and service delivery concerns above human rights. Any interference with rights must only be where necessary and proportionate, and I strongly advise that the amendments are not pursued at this time and that they are scrutinised and reviewed to ensure that they are compliant with international law.