STATES OF JERSEY

DRAFT CHILDREN (ARRANGEMENTS TO ASSIST CHILDREN TO LIVE OUTSIDE JERSEY) (AMENDMENT) (JERSEY) LAW 202- (P.9/2022) – COMMENTS

Presented to the States on 25th February 2022
by the Children, Education and Home Affairs Scrutiny Panel

STATES GREFFE

COMMENTS

The Draft Children (Arrangements to Assist Children to Live Outside Jersey) (Amendment) (Jersey) Law 202- (hereafter 'the draft Law') was lodged by the Minister for Children and Education on 18th January 2022. It should be noted that the draft Law has been brought forward in order to tackle a specific issue that had been raised by the Royal Court in respect of Schedule 2, paragraph 4 of the Children (Jersey) Law 2002 (hereafter 'the Primary Law') which relates to the arrangements to assist children to live outside Jersey.

The Children, Education and Home Affairs Panel (hereafter 'the Panel') arranged a briefing on the proposals that took place on Thursday 27th January 2022 in order to further understand the rationale for them being brought forward. During the briefing, the Panel was given an overview of the change and also raised a number of questions in relation to it. These comments are designed to provide an overview of the information received and the responses to the questions raised to help inform States Members ahead of the debate.

Background and overview of proposals

During the briefing, the Head of Children's Policy explained to the Panel that the amendment seeks to make a minor change to Schedule 2 of the Primary Law in order to address an issue which had been raised by the Royal Court in respect of applications for a child to be placed in care off-Island. It is noted that, at present, the wording of paragraph 4(2)(c)(ii) of the Schedule makes reference to the term 'suitable person' and that the Royal Court had recommended that the Minister consider an amendment to the Primary Law to provide clarity that would enable the perceived proper interpretation and application of paragraph 4(2)(c). It was explained that, whilst a recent judgement of the Court had found that the term 'suitable person' could be interpreted to include corporate residential units off-Island, a differently constituted Court could arrive at a different interpretation of the definition, restricting its interpretation to placements with individual persons only.

It was further explained that the Court will not approve of an off-Island placement for a child at present unless it is satisfied of the following:

- It is satisfied that it is in the child's best interests.
- Suitable arrangements have been made, or will be made, for the child's reception and welfare in the country where they are to live.
- The child has consented to living in that country (except where the Court is satisfied that the child does not have sufficient understanding to give or withhold consent and the child is to live with a parent, guardian or 'suitable person').
- Every person with parental responsibility for the child has consented to the child living in that country except where the Court is satisfied that the person could not be found, is incapable of consenting or was withholding their consent unreasonably.

The Panel has been provided with examples of what the Court would require in respect of these various safeguards as follows:

In the course of proceedings, the Minister is required to file a statement in support of the application which in practice will be prepared by a social worker from the children's service. The statement will include details of the proposed placement and why it is necessary. In preparing the application and statement, the social worker will have made enquiries about the residential accommodation and where appropriate may have visited the accommodation in person. The social worker can be questioned about the statement during proceedings by any party. In addition, parties themselves can present statements to the court. The child's guardian may also make their own enquiries regarding the proposed accommodation and, where appropriate, may have visited the accommodation in person.[1]

In respect of the current arrangements and requirements, it was explained that the term 'suitable person' risked uncertainty and the potential for a restrictive, unintended interpretation of the current drafting of the Primary Law. It is noted that where a child does not have sufficient understanding to give or withhold consent, there is an anomaly that could restrict the options for where a child could be placed if the term 'suitable person' was not taken by the Court to include corporate residential units/homes. It was explained that the amendment, therefore, sought to address this issue by removing reference to the term 'suitable person' which in turn would remove the requirement for the Court to interpret this and any potential risk associated with this. From a policy perspective it was outlined that all other safeguards in respect of the decision (as detailed above) would remain in the current Primary Law.

Use of the term suitable person

The Panel questioned why the term 'suitable person' was included in the Primary Law in the first instance. It was explained that it was likely that, at the time of drafting the Primary Law, the issue may not have been anticipated that the term 'suitable person' would or would not have included a corporate entity. Furthermore, it was explained that the Minister has powers in respect of placements on-Island and, therefore, no similar clause exists in relation to placing children in on-Island residential settings. The Panel also questioned whether any further terms had been considered to clarify what a 'suitable person' was rather than simply removing it from the legislation as per the amendment. It was confirmed that the draft Law focussed simply on implementing the Courts recommendation and the removal of the term in its entirety was deemed the simplest way to achieve this. As a result, it was confirmed that it was not necessary to consider further definitions of the term.

Communication of the changes

It is noted by the Panel that the amendment could be interpreted as being simply for the convenience of the Courts and it therefore questioned what messaging would be put out by the Minister in respect of its need. It was explained that removal of the term would not affect the requirement on the Court to ensure that arrangements for the child were satisfactory, but inclusion of the term could create situations where options (which may be in the best interests of the child) were subsequently limited by the Courts interpretation, ultimately affecting the care received by the child.

[1] Response from Minister for Children and Education

The Panel questioned whether the Children's Commissioner and other stakeholders had been consulted on the proposed changes. It was explained at the time of the briefing that the amendment had been passed to the Commissioner for comments. The Panel would state that, given the context of Jersey in the past, consideration needs to be given to how the changes, no matter how small, are communicated and presented.

The Panel would argue that this change could be perceived as making it easier to place children off-Island. Whilst it has not received any evidence to suggest this is the case, again given the contextual history in Jersey, the Minister must ensure that a clear explanation of the safeguarding procedures in respect of the Courts decision (as outlined above) is provided.

Named Person for a child placed off-Island

The Panel questioned whether removal of the term would affect the need/requirement to have a 'named person' in the jurisdiction in which the child was placed. It was explained that, in practice, the designated Social Worker in Jersey would be responsible for maintaining links and visiting the child regularly and that a 'named contact' would be within the setting in which the child was placed.

The Panel questioned whether the retention of the term could be an additional safeguard to ensure a 'named contact' was provided in all instances. It was again reiterated that the recommendation from the Royal Court was helpful as it gave a strong steer as to how the current drafting of the Law impeded options which may be in the best interest of children. It was confirmed that removal of the term within legislation would not affect the ongoing practice in this regard.

Comparison to Children Act (1989)

The Panel notes within the accompanying report to the amendment that a similar amendment has been made to the Children Act (1989) to provide for placement outside of England and Wales, in Scotland, for secure accommodation, but not for other types of residential care. It was asked if the proposed amendment shadowed that which had been made in England and Wales. It was explained that this was not possible as the scope of the amendment in Children Act could be more limited due to multiple local authorities, meaning a child could be placed in a neighbouring authority within the same jurisdiction. Ultimately in Jersey this would not be possible and whilst this had been referenced within the report, the Island is adopting a different approach to England and Wales.

Intention to keep children on-Island

During the briefing, the Head of Children's Policy explained that the policy intention is still to keep children on-Island unless absolutely necessary, and that the trend in relation to off-Island placements has been reducing post care inquiry. The Panel requested details of the number of off-Island placements that had been made every year since 2017. During a public hearing on 4th February 2022, the Panel was informed that at present there are 17 young people placed off-Island which has reduced from 24 in 2019.[2]

Links to Children and Young People (Jersey) Law 202-

[2] Quarterly Hearing – Minister for Children and Education – 4th February 2022 p.33

The Panel notes that, at the previous States sitting, the Children and Young People (Jersey) Law 202- (the 'new Law') was adopted by the States Assembly. The Panel also notes that this new legislation places a statutory duty on the Minister in relation to children in care. It also noted that Article 38(3) the new Law states that 'the Minister may make arrangements with relevant providers to provide services on the Minister's behalf.' The Panel questioned how this proposed article would relate to arrangements for off-Island placements if at all. The following response was provided:

> *Services provided to individual looked after children to meet their assessed wellbeing needs will be set out in their wellbeing plan to be prepared under Article 36 of the draft Law ('Children and Young People (Jersey) Law 202- ') and what it must contain is detailed in Article 36(6). Targeted interventions delivered through the wellbeing plan to individual children may include services that are commissioned under Article 38(1) of the draft Law. The policy intent was to make no distinction in the Law between meeting the assessed wellbeing needs of looked after children - whether they are on or off Island.*

The Panel is satisfied that the overall policy intent does not distinguish between whether the child is on or off-Island and, therefore, there is no direct impact in relation to this particular amendment.

Ordinary Residence of a child placed off-Island

The Panel notes that, in the interpretation of the Children (Jersey) Law 2002, Article 1(5) outlines matters to be considered when determining the ordinary residence of a child. It is noted that Article 1(5)(c) states that there shall be disregarded any period in which the child lives in any place while the child is being provided with accommodation by or on behalf of the Minister. The Panel questioned whether this would also apply to a child placed off-Island. It was confirmed that any period of time where a child looked after by the Minister is placed off-Island in accommodation is disregarded when determining the 'ordinary residence' of the child.

Interpretation of 'Responsible Person'

In the interpretation of the Children (Jersey) Law 2002 the term 'responsible person' relates to any person who has parental responsibility for the child or any other person with whom the child is still living. The Panel questioned whether this term also extended to a corporate entity (i.e. residential children's home) in respect of the second part of the interpretation. It was confirmed that this term related to children who are under a supervision order and is not relevant, in statutory terms, to the placement arrangements made under Schedule 2, paragraph 4 of the Primary Law. It therefore does not relate to the proposed draft Law.

Conclusion

The Panel would like to place on record its thanks to the Minister, his Officers and representatives from the Law Officers' Department for providing it with further information and responding to its questions in relation to the draft Law.

The Panel understands that this is a relatively minor amendment to the overriding law and is intended to provide assurance and clarity in relation to the options available to

meet the best interests of children. It would, however, caution that there is a possibility that the amendment could be perceived in a negative way which must be addressed clearly by the Minister.

Ultimately the Panel is reassured that placing children off-Island remains a last resort from a policy perspective and the overall safeguards adhered to by the Courts are not affected by this change. It is therefore supportive of the amendment.