

STATES OF JERSEY



DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (PLACEMENT PANEL) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 27th September 2016
by the Minister for Home Affairs**

STATES GREFFE



Jersey

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REPORT

Introduction

In July 2014, the States Assembly debated and adopted the Criminal Justice (Young Offenders) (Jersey) Law 2014 (the “2014 Law”) which is intended to replace the existing Criminal Justice (Young Offenders) (Jersey) Law 1994 (the “1994 Law”). Then, in May 2016, prior to the 2014 Law being brought into force, the States debated and adopted the Criminal Justice (Young Offenders) (No. 2) (Jersey) Law 201- (“the No. 2 Law”), bringing forward a number of changes to the 2014 Law (which was not yet enacted).

Part 4 of the 2014 Law, as amended by the No. 2 Law, provides for the establishment of a Placement Panel and sets out that the States will, by Regulations, make provision for the appointment of Panel members, their removal, rights of appeal and all such other matters relating to the constitution and governance of the Panel. More details relating to the Draft Criminal Justice (Young Offenders) (Placement Panel) (Jersey) Regulations 201- (“the draft Regulations”) are set out below.

Criminal Justice (Young Offenders) (Placement Panel) (Jersey) Regulations 201-

Part 4 of the 2014 Law, as amended by the No. 2 Law ([P.33/2016](#)), provides for the establishment of a Placement Panel whose function includes –

- (a) determining the appropriate place of custody for a child or young person who is remanded in custody or sentenced to youth detention;
- (b) regularly reviewing its decision concerning the placement of a child or young person and, if appropriate, moving that child or young person to a different place of custody (those reviews will be within one month of the placement starting and then at intervals of no more than 3 months; or, in the case of a female aged 15–17 years who is detained in H.M.P. La Moye, within one week of the placement starting and then at intervals of no more than one month);
- (c) consulting with the Secretary of State where it is determined that a child or young person is to spend all, or part of their sentence outside Jersey; and
- (d) making arrangements for the delivery of a child or young person to or from any place of detention.

Key features of the draft Regulations include –

1. Membership

The Panel will have 5 to 10 members appointed by the Minister for Home Affairs. One of those members will act as Chairman, and 2 as Vice-Chairmen. Each shall be appointed for a 3-year term which can be extended.

The Members will be either –

- (a) Probation Officers;
- (b) employees of the Education Department;
- (c) employees of the Health and Social Services Department;
- (d) any other person whom the Minister deems appropriate, having regard to the person's knowledge and experience (for example; representatives of charities, other appropriately experienced staff).

Whilst the Panel could include members who work for Greenfields, Children's Social Services, or H.M.P. La Moye, the draft Regulations preclude them from acting as Chairman or Vice-Chairman of the Panel. This is to allow the Panel to benefit from the experience and knowledge of those members whilst precluding them from having a casting vote in the event that a decision cannot be reached about a placement decision. This is a safeguard against the possibility of those individuals being conflicted, or being perceived to be conflicted, in relation to decisions which could have an impact on departmental resources.

2. Proceedings

The quorum for each Panel meeting is 3 members, with the Chairman or person presiding having the casting vote. In order to support timely decision-making, the meetings can take place remotely using IT, teleconferencing, etc.

3. Appeals

The draft Regulations provide for appeals against Panel decisions to be considered by the Minister for Health and Social Services, as opposed to the Minister for Home Affairs. This is to reflect the fact that, at the point at which the 2014 Law comes into effect, all children and young people who are detained in Jersey will fall under the care of the Minister for Health and Social Services and will be treated as 'looked after children' under the Children (Jersey) Law 2002.

The draft Regulations set out that the child or young person, or any person with parental responsibility for them, can appeal to the Minister for Health and Social Services if they are aggrieved by the Panel's placement decision.

The Minister for Health and Social Services can, on hearing the appeal, direct the Panel to reconsider their placement decision. The Minister cannot overturn or substitute the Panel's decision, because to do so would cut across the legal requirement placed upon the Panel to review each placement on a 3-monthly or monthly basis. If the Minister were to overturn the Panel's decision, a situation could arise whereby the Panel makes a decision, the Minister overturns that decision, and the Panel then reverts to its original placement decision at the next 3-monthly or monthly review.

Financial and manpower implications

It is not anticipated that there will be any requirement for additional resources associated with these draft Regulations. The costs associated with the establishment of the Placement Panel (for example, recruitment costs) and the running of the Panel (for example, out-of-pocket expenses) will be met from within existing resources.

Explanatory Note

These Regulations make provision for the Placement Panel (“Panel”) established by Article 17 of the Criminal Justice (Young Offenders) (Jersey) Law 2014.

Regulation 1 is an interpretation provision.

Regulation 2 makes provision for membership of the Panel. The Minister for Home Affairs (“Minister”) must appoint a minimum of 5 and maximum of 10 Panel members, including a Chair and 2 Vice-Chairs. The Panel members must be appointed from a pool of persons comprising probation officers, States employees in the Department for Education and in the Department for Health and Social Services. The Minister must use his or her reasonable endeavours to ensure that there is at least one panel member from each different category of persons. The Minister may, in addition, appoint any other person who he or she deems appropriate having regard to the person’s knowledge and expertise. The Minister must not appoint as Chair or Vice-Chair any person who is employed to work in secure accommodation at Greenfields, Children Social Services or the Prison.

Regulation 3 provides for appointment as a Panel member to be for a renewable term of 3 years and for membership to be terminated at the instigation of either the Minister (on the recommendation of the Panel Chair, except where the Panel Chair is involved) or the Panel member concerned.

Regulation 4 makes provision for Panel proceedings. In particular, it allows meetings to take place at which not all Panel members are physically present. The quorum for a meeting is 3 members and a decision must be unanimous or taken by a majority of members (with the person presiding at the meeting having a second or casting vote in the event of a tied vote). There must be a written record of the decision taken at any meeting and the names of the Panel members attending the meeting.

Regulation 5 makes provision for the out of pocket expenses of a member of the Panel carrying out his or her functions as member to be paid by the Minister.

Regulation 6 makes provision for appeals to the Minister for Health and Social Services against decisions of the Panel.

Regulation 7 sets out the title of these Regulations and provides that they will come into force on the same date that the Criminal Justice (Young Offenders) (Jersey) Law 2014 comes into force. That Law will come into force by Appointed Day Act.



Jersey

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OFFENDERS) (PLACEMENT PANEL) (JERSEY)
REGULATIONS 201-**

Arrangement

Regulation

1	Interpretation	9
2	Membership of the Panel.....	9
3	Term of appointment.....	10
4	Proceedings of the Panel	10
5	Expenses.....	11
6	Appeals against decisions of the Panel.....	11
7	Citation and commencement.....	12



Jersey

DRAFT CRIMINAL JUSTICE (YOUNG OFFENDERS) (PLACEMENT PANEL) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 22 of the Criminal Justice (Young Offenders) (Jersey) Law 2014¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“decision” of the Panel includes a determination for the purposes of the Criminal Justice (Young Offenders) (Jersey) Law 2014²;

“department” means a department of the States for which a Minister is responsible;

“member” means a member of the Panel appointed under Regulation 2;

“States’ employee” has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005³.

2 Membership of the Panel

- (1) The Panel shall comprise no fewer than 5 and no more than 10 members.
- (2) The Minister shall –
 - (a) appoint each of the members;
 - (b) appoint one of the members to be Chair of the Panel;
 - (c) appoint 2 of the members each to be Vice-Chair, such appointment to be made after consultation with the Chair.
- (3) Each member of the Panel shall be a person described in any of subparagraphs (a) to (d) below –
 - (a) a probation officer;
 - (b) a States’ employee employed in a department relating to education;
 - (c) a States’ employee employed in a department relating to health and social services;

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- (d) a person (including a States' employee), other than a person falling within a description in another sub-paragraph, who works or has worked for, or who is or was otherwise involved with, an organization which provides services or support to children or young people or both, regardless of whether the provision of such services or support is through charity, voluntary or paid work.
 - (4) When appointing members of the Panel, the Minister shall use his or her reasonable endeavours to ensure that, as far as possible, each description in sub-paragraphs (a) to (d) of paragraph (3) applies to one or more members.
 - (5) The Minister shall not appoint as Chair or Vice-Chair a member of the Panel who is employed –
 - (a) to work in the administration or management of secure accommodation;
 - (b) to work in a department relating to health and social services and who has responsibilities relating specifically to the social welfare of persons under the age of 18 (other than a person employed in the part of the department responsible for mental health services only);
 - (c) to work as a prison officer within the meaning of the Prison (Jersey) Law 1957⁴ or to work otherwise in the administration or management of a prison or young offender institution within the meaning of that Law.

3 Term of appointment

- (1) Each member of the Panel shall be appointed for a term of 3 years.
- (2) A member of the Panel may be reappointed for a further term of 3 years regardless of whether the re-appointment follows a first or subsequent term of appointment.
- (3) The Minister may terminate a member's term of appointment before the expiry of the 3 year term at the request of the member or if the Minister otherwise so decides, subject to paragraph (4).
- (4) Except in the case of the Chair of the Panel, the Minister shall not terminate the appointment of a member unless the Chair of the Panel recommends the termination.

4 Proceedings of the Panel

- (1) Except as otherwise provided in this Regulation, the Panel shall determine –
 - (a) when and where it meets; and
 - (b) its procedure at its meetings.
- (2) The Panel may hold meetings in which members participate but are not physically present in the same place and, for the purpose of this Regulation, all members participating in such a meeting shall be deemed to be present at the meeting.
- (3) The quorum for a meeting of the Panel shall be 3 members.

- (4) The Chair of the Panel shall preside at the meeting or, if the Chair is not present, one of the Vice-Chairs shall preside or such other member, subject to paragraph (5), as the other members may elect in the absence of both Vice-Chairs.
- (5) A member cannot be elected under paragraph (4) if the member could not be appointed as Chair or Vice-Chair under Regulation 2(5).
- (6) A decision of the Panel shall be by unanimous vote or by a majority of members present at the meeting at which the decision is voted upon.
- (7) In the event that no decision is reached by a majority of members present at a meeting in relation to any particular matter, the person presiding at the meeting shall have a second or casting vote.
- (8) The person presiding at the meeting shall ensure that a written record is made of –
 - (a) any decision taken by the Panel at the meeting; and
 - (b) which members were present at the meeting.
- (9) Each written record of a meeting shall be sent to the Minister and retained by him or her.

5 Expenses

The Minister shall pay any reasonable out of pocket expenses incurred by a member of the Panel in the course of carrying out his or her functions as a member.

6 Appeals against decisions of the Panel

- (1) In this Regulation –
 - (a) “child or young person” refers to a child or young person who is the subject of a decision by the Panel;
 - (b) “Minister” means the Minister for Health and Social Services;
 - (c) “person with parental responsibility” shall be construed in accordance with the Children (Jersey) Law 2002⁵.
- (2) A person aggrieved by a decision of the Panel may, within 21 days of the date of the decision, appeal to the Minister on the ground that the decision is not in the best interests of the child or young person.
- (3) In paragraph (2) “person” refers to a child or young person or a person with parental responsibility for such a child or young person.
- (4) The Minister may allow a longer period for making an appeal than that referred to in paragraph (2) if he or she is satisfied that it is desirable in the interests of justice to do so.
- (5) On hearing the appeal, the Minister shall, with reasons –
 - (a) confirm the Panel’s decision; or

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- (b) direct the Panel to reconsider its decision if he or she considers that the decision was not in the best interests of the child or young person.
 - (6) The Minister may, at any time, direct the Panel to reconsider any decision it makes if he or she considers that the decision was not in the best interests of the child or young person.

7 Citation and commencement

These Regulations may be cited as the Criminal Justice (Young Offenders) (Placement Panel) (Jersey) Regulations 201- and shall come into force on the same date that the Criminal Justice (Young Offenders) (Jersey) Law 2014⁶ comes into force.

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- 1 *L.27/2014*
 - 2 *L.27/2014*
 - 3 *chapter 16.325*
 - 4 *chapter 23.775*
 - 5 *chapter 12.200*
 - 6 *L.27/2014*