



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

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March 2020

### **Comment on Draft Regulation of Care (Standards and Requirements) (Covid-19 - Temporary Amendment) (Jersey) Regulations 202-**

I welcome the steps that the Government of Jersey is taking to allow for the additional flexibility that will be required as the Covid-19 situation develops, and it is vital that this response is grounded in human rights.

The United Nations Convention on the Rights of the Child (UNCRC), which was extended to Jersey in 2014, contains significant rights protections for children and young people. It is the most widely and rapidly ratified treaty and established a set of international minimum standards, recognising that children require special measures of care and protection. This includes a broad range of protections, all of which are equally important, however 4 General Principles have emerged which help to interpret the Convention.

These are:

- non-discrimination and equality (Article 2)
- the best interests of the child (Article 3)
- the right to life, survival and development (Article 6)
- the right to be heard (Article 12)

Any interference in children's rights must be strictly necessary, proportionate and non-discriminatory. Children who are being looked after by the State are entitled to special protection and assistance provided by the State under Article 20.

Under Article 19 of the UNCRC, the State "shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

This duty remains, and therefore the relaxation on regulations to employ staff before background checks have been fully carried out must only be done when strictly necessary, where it is in the child's best interests, and the delay must be for the shortest possible period of time. In circumstances where this is deemed necessary, it is vital that additional safeguards are brought in place such as not leaving staff alone with a child until they have passed any security checks. Liaising with the Disclosure and Barring Service to identify and mitigate any delays in the security checks must be pursued as a matter of priority to ensure that children and young people in Jersey are kept safe.

Similarly, provisions which allow the Jersey Care Commission to disapply Regulations which require workers to be suitably qualified must be accompanied with robust guidance which ensures that there is a base level of training and support, alongside initiatives such as mentor

systems. Redeployment of staff and recruitment of additional staff should be identified as a matter of urgency to allow for at least a basic level of training and understanding of children's rights, safeguarding measures and protocols, and other training normally provided for staff in these roles. Their appointment should only be made if it is in the child's best interests that they are hired.

Further, routine reviews as to how the system is working throughout this period will help to keep us all safe. This briefing note is provided not to criticise the change to regulations but to ensure that we work together at such a difficult time, and ensure through these reviews that not only are children and young people's rights being protected, but that staff are supported to protect, respect and fulfil these rights. This routine review would also allow for the timely adjustments such as additional resources or adaptations to support staff as early as possible. Indeed, under Article 25 of the UNCRC, looked after children are entitled to periodic review of their care and treatment.

I note that Regulation 4 extends the time limits on the Care Commission to carry out inspections from one year to up to two years. I understand that there may be a shortage of the necessary resource to carry out these inspections, however I suggest that a priority is given to residential settings who care for our children who are looked after.

I wish to highlight that there are a range of actors who can play a role to ensure that the care, support and protection of our children is not compromised. Between us we can ensure that there are regular visits in the intervening period. I have statutory powers to enter children's homes and will continue to do so to monitor care, standards and rights. There are also Independent Reviewing Officers, the Children's Rights Officer, as well as independent advocacy services through Jersey Cares who can amplify the voices of care experienced children and young people. Whilst the role of the Care Commission is extremely important, there are other mechanisms available to ensure that children's rights continue to be protected, respected and fulfilled throughout this uncertain period.

I appreciate that adaptations will be required to ensure children are cared for and protected, however rights under the UNCRC are universal international minimums, and not optional. Rights are there to protect children and are just as necessary, if not more so, in times of crisis. I strongly advise that all guidance is grounded in and based on children's rights in order to ensure where balances are struck, they are informed by proportionality assessments that take full account of rights protections as laid out in the UNCRC.