



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

Draft Children (Placement) (Amendment) (Jersey) Regulation 202-

I have significant concerns regarding the proposed amendment to place children with unregistered foster carers for a substantial period of time, which may be putting children at significant risk of harm. This risk is compounded by the lack of additional safeguards, which undermine children's rights to be safe, supported and protected. I am clear that at times of crisis, additional safeguards are required, not less.

The current law is established in the Children (Placement) (Jersey) Regulations 2005, which provides that the Minister can only make an emergency placement if they are satisfied that it is the most suitable way of performing the duty to promote the wellbeing and safeguard the child. If this test is met, the child can then be placed with a person who is not a registered foster carer for up to a maximum of 12 weeks, provided that person is a relative or friend of the child and has made a written agreement to fulfil the duties specified in the Regulation. UK legislation permits a placement like this for no more than 16 weeks.¹

This amendment would seek to extend this period beyond 12 weeks to approximately double, meaning children could be placed with unregistered foster carers for up to six months. This raises significant concerns over their safety and right to live free from harm. I would request further clarity as to what viability assessment would be undertaken to place a child with a non-registered foster carer. Would checks be undertaken with the Disclosure and Barring Service (DBS) prior to arranging a placement? In passing the Regulation of Care (Standards and Requirements) (Covid-19 - Temporary Amendment) (Jersey) Regulations 2020, the legislation sought to allow for possible significant delays with the DBS checks, indicating significant concern that this may be an issue. How will this be mitigated for emergency foster placements?

I have liaised with the Care Commission, who shares my concerns that *"the usual safeguards including increased vigilance on the new placement mostly by social workers visiting once a week may be a challenge to maintain."*

The Safeguarding Partnership Board Chair comments that the amendment may not be necessary due to the Government taking *"a variety of steps to stabilize and strengthen foster placements during COVID 19 such as:*

- *Freeing up placements in existing approved foster carers*
- *Undertaking remote foster placement panels to speed up approvals*
- *Flexing the number and age range that current approved foster carers can take*

They added that *"the UK Government has not yet taken action to extend placements of connected carer foster placements and so the Government of Jersey may want to hold back on the proposed amendment at this point."*

As noted by the Care Commission, *"there is a need for significant safeguards to be put in place if such an amendment is put in place and there is cause to use it. These should*

¹ See <http://www.legislation.gov.uk/uksi/2011/581/made>

include senior managers in Children's Services having increased oversight and putting in place arrangements to ensure that any such placement is robustly monitored."

The current amendment makes no provision for any additional safeguards and given the predicted impact of Covid-19 on the workforce, the current safeguards may be weakened. Further, foster care placements may be under additional strain due to difficulties of staying inside as part of the social distancing measures, and we have seen a rise in incidents in domestic violence in other countries, thereby increasing the risk of harm to children.

Additionally, I have significant concerns as to how the full complement of children's rights under the United Nations Convention on the Rights of the Child (UNCRC) would be met during the current Covid-19 pandemic. This includes their right to have a say in decisions which affect them²; their right to family life³ to maintain contact with their family including siblings; their right to the highest attainable standard of health, including mental health⁴ and their access to education.⁵

The 2005 Regulations provides that in making a decision, the Minister will have regard, so far as is reasonably practicable, to considerations as laid out in Schedule 1, which includes contact with family members, health considerations and access to education. Children's rights are not optional, but international minimums protected by law, yet this is not reflected in the 2005 Regulations. It does not embed sufficient safeguards for children's rights, and particularly during a pandemic, what is 'reasonably practicable' could look very different to a children's rights compliant decision.

I therefore would like clarity over how children's rights will be protected. For example, what additional supports and safeguards would be in place for children with complex needs, how would a child's right to education continue to be met; and how would a foster carer's capacity to support a child with their education be assessed?

How would their right to family life be met; would children be placed alongside their siblings if they become looked after? How would contact be managed?

Importantly, how would a child be engaged with to ascertain their views and needs on a continuous basis, and what support would be offered including access to advocacy services?

Further, the 2005 Regulations provide that the Minister must "so far as is reasonably practicable, make immediate and long-term arrangements for that placement and for promoting the welfare of the child who is to be placed"⁶ before a placement is arranged, or as soon as is reasonably practicable to do so. The impact of entering into an emergency foster care placement will have a significant impact on the child's mental health and having a long-term plan can help to alleviate some of the uncertainty a child may be experiencing. The rights of the child must be the central focus of laws and policies, and not what is easiest to manage from a service position even in current extraordinary circumstances.

As has been stressed repeatedly in my correspondence throughout the Covid-19 outbreak, any interference in children's rights must be necessary, proportionate and non-discriminatory. The Government has not made the case that these measures are necessary

² Article 12

³ Article 16

⁴ Article 24

⁵ Article 28

⁶ Regulation 2, Children (Placement) (Jersey) Regulations 2005

or indeed proportionate, and therefore this amendment would prioritise systemic convenience over the rights of children in Jersey. As the Commissioner for Children and Young People in Jersey I do not support this amendment.