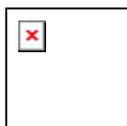


DRAFT DAY CARE OF CHILDREN (JERSEY) LAW 200-

**Lodged au Greffe on 18th December 2001
by the Education Committee**



STATES OF JERSEY

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European Convention on Human Rights

The President of the Education Committee has made the following statement -

In the view of the Education Committee the provisions of the Draft Day Care of Children (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator L. Norman**

REPORT

In response to the proposal by the Health and Social Services Committee to enact a new Children (Jersey) Law, the Education Committee agreed that it was appropriate to regulate the provision of day care of children by means of a new Day Care of Children (Jersey) Law. In so doing, the Education Committee, whilst recognising that the fundamental principles of the existing Law need not be changed, has taken the opportunity to make some changes to the existing arrangements and to incorporate some of the provisions of the United Kingdom Children Act 1989.

The principal differences between Part VII of the existing Children (Jersey) Law 1969 and the proposed Day Care of Children (Jersey) Law are identified in the Explanatory Notes accompanying the new Law. It may be seen that the Committee is seeking, by these changes, to introduce more clarity to the requirements of and definitions for the existing scheme of registration and, where appropriate, to improve child safety by bringing certain areas of the previous Law in line with current local and United Kingdom good practice.

In addition, the proposed new upper age limit of twelve years, in relation to the registration of both day care providers and provisions, brings the Law and the registration scheme in line with the principles approved by the States when it agreed to the establishment of the Child Care Trust and the recent introduction of child care allowance and tax relief schemes.

The proposed Law has been the subject of wide consultation with all major parties interested in the day care of children and, where appropriate, has been amended to take account of concerns and comments received. The Education Committee therefore commends this replacement Law to the House and asks that it be approved for enactment at the same time as the draft Children (Jersey) Law 200-.

This draft Law has no implications for the financial or manpower resources of the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 7th November 2001 the Education Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Education Committee the provisions of the Draft Day Care of Children (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law re-enacts with some amendments Part VII of the Children (Jersey) Law 1969 (“the 1969 Law”). Other provisions concerning children administered by the Health and Social Services Committee are contained in the draft Children (Jersey) Law 200- (P.200/2001) which repeals the 1969 Law. Part VII of the 1969 Law was administered by the Education Committee, hence it is proposed to regulate the provision of day care of children by means of a separate Law administered by the Education Committee, intended to be brought into force at the same time as the new Children Law.

Article 1 contains the interpretation provisions. The definitions of “day care accommodation” (formerly called nurseries) and “day carer” (previously “child minder”) both apply to children under the age of 12 (whereas under the 1969 Law nurseries were regulated if they looked after children up to school leaving age and child minders were covered by the Law if they looked after children under the age of five years).

Article 2 requires day care accommodation and day carers to be registered with the Committee. There is power to refuse registration in certain circumstances and to grant exemptions from the registration requirements, with or without conditions.

Article 3 introduces a new provision prohibiting a person from being involved with day care accommodation or acting as a day carer if he is disqualified under the new Children Law from being involved with a voluntary home or acting as a foster parent.

Article 4 empowers the Committee to impose requirements in respect of day care accommodation and day carers. These refine and expand upon the requirements set out in the 1969 Law.

Article 5 re-enacts provisions regarding the issuing of certificates of registration. *Article 6* provides new powers to charge a fee in connection with registration or applications for registration. *Article 7* empowers the Committee to cancel registration.

Article 8 provides for notice of the Committee’s intended decisions to be sent to the person concerned together with reasons for its decisions. The Committee must inform him of his right to be heard and if the Committee nevertheless confirm its decision, his right to appeal to the Royal Court. Appeals are governed by *Article 9*.

Article 10 is a new provision enabling the Royal Court to order a Committee decision to have immediate effect where it is satisfied that a child who is being, or may be, looked after in day care accommodation or by a day carer is suffering, or is likely to suffer, significant harm.

Article 11 re-enacts provisions in the existing Law allowing for inspection of premises, children, arrangements for their welfare and records. [There is provision with respect to warrants in cases of refusal or likely refusal of permission to inspect in Article 77 of the draft Children Law].

Article 12 makes it an offence to contravene various provisions of the Law carrying a fine not exceeding level 3 on the standard scale.

Article 13 is a transitional provision which enables registrations and requirements effected under the 1969 Law to have effect as if made under the new Law.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, the standard scale of fines is-

Level 1	-	£50
Level 2	-	£500
Level 3	-	£2,000
Level 4	-	£5,000.

DAY CARE OF CHILDREN (JERSEY) LAW 200-

A LAW to make new provision for the regulation of the care of children for short periods and for connected purposes; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires -

“Committee” means the Education Committee;

“day care accommodation” means any place where children under the age of 12 years are looked after for reward for a period or periods the total of which exceeds two hours in any day and six days in any calendar year and which is not -

- (a) wholly or mainly used as a private dwelling;
- (b) a place (such as a supermarket or hotel crèche) where the parents of, or other persons who normally care for, those children are not expected to leave the vicinity while the children are being looked after; or
- (c) a place which, in respect of those children, is operating as a school, hospital, nursing home, mental nursing home, residential care home or voluntary home;

“day carer” means a person -

- (a) who looks after one or more children under the age of 12 years in his home or other place wholly or mainly used as a private dwelling for reward;
- (b) who looks after any such child for a period or periods the total of which exceeds two hours in any day and six days in any calendar year; and
- (c) who is not -
 - (i) a parent or relative of, or person with parental responsibility for, all such children,
 - (ii) a Committee foster parent of all such children nor is fostering them privately, and
 - (iii) employed as a nanny for all such children by a parent of, or other person who normally cares for, those children and who is looking after the children wholly or mainly in the home of his employer;

“premises” means day care accommodation or the place where a day carer looks after, or proposes to look after, any children.

(2) Words and phrases used in this Law shall, unless the context otherwise requires, have the same respective meanings as in the Children (Jersey) Law 200-^[1].

(3) A reference in this Law to an Article by number only, and without further identification, is a reference to the Article of that number in this Law and a reference in an Article or other division of this Law to a paragraph by number only, and without further identification, is a reference to the paragraph of that number in the Article or other division of this Law.

(4) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

ARTICLE 2

Registration of day care accommodation and day carers

(1) The Committee shall keep registers of day care accommodation and day carers and such registers shall be open to inspection at all times.

(2) Any person -

(a) looking after or proposing to look after any children in day care accommodation; or

(b) acting or proposing to act as a day carer,

shall apply for registration under this Article in such manner and accompanied by such particulars as the Committee may require, and on receipt of such application the Committee shall, subject to the provisions of this Article, register the accommodation or person as the case may be.

(3) Where a day carer registered under this Article changes premises, his registration shall cease to have effect unless and until he is re-registered in accordance with this Article.

(4) The Committee may refuse an application for registration under this Article if it is satisfied that -

(a) the premises are not fit to be used for looking after children, whether because of the condition of the premises, the adequacy of any equipment used on the premises, or for any reason connected with the situation, construction or size of the premises;

(b) the applicant or any person looking after, or likely to be looking after, any children on the premises is not fit to look after children;

(c) any person living or working, or likely to be living or working, on the premises is not fit to be in the proximity of children.

(5) The Committee may, in its absolute discretion -

(a) grant exemption from the provisions of this Article;

(b) attach to any such exemption such conditions as it thinks fit; and

(c) vary such conditions at any time or withdraw the exemption.

ARTICLE 3

Disqualification

A person who is disqualified for the purposes of Article 54(2) or Article 62 of the Children (Jersey) Law 200-^[2] by virtue of Schedule 4 to that Law shall not -

(a) look after a child in day care accommodation or be concerned in the management of or have a financial interest in such accommodation;

- (b) employ a person to look after children in day care accommodation; or
- (c) act as a day carer,

unless he has disclosed the disqualification to the Committee and obtained its consent.

ARTICLE 4

Power to impose requirements in respect of day care accommodation and day carers

- (1) Where the Committee registers an application under Article 2, it may impose any or all of the following requirements -
 - (a) specify the maximum number of children, or the maximum number of children within specified age groups, who may be looked after (having regard to the number of other children who may at any time be on the premises);
 - (b) require the applicant to secure that the premises and the equipment used on the premises, are adequately maintained and kept safe;
 - (c) require the applicant to keep records in relation to the children received, and persons living or working, at the premises containing such particulars as it may specify; and
 - (d) specify the training and qualifications to be possessed by the day carer or any person employed at day care accommodation;
 - (e) in the case of day care accommodation -
 - (i) specify the number of persons who may be employed at that accommodation,
 - (ii) require to be kept informed of the persons there employed, their names, addresses, training and qualifications, and the facilities provided and the period during which they are provided; and
 - (f) impose such other requirements as to the health and welfare of children being looked after as it considers appropriate.
- (2) The Committee may at any time vary any requirement imposed under this Article, impose any additional requirement or remove any requirement.

ARTICLE 5

Certificates of registration

- (1) Where the Committee registers a person under Article 2 it shall issue him with a certificate of registration.
- (2) The certificate -
 - (a) shall specify the address of the premises and, in the case of a day carer, his name and address; and
 - (b) shall be accompanied by any requirement imposed under Article 4.
- (3) Where, due to a change of circumstances, any part of the certificate requires to be amended, the Committee shall issue an amended certificate.
- (4) The certificate of registration shall be displayed in a prominent position in the premises in which any child is to be looked after and produced or delivered to the Committee when so required.

ARTICLE 6

Fees

(1) The Committee may charge such fees as it may prescribe by Order for or in connection with any registration or application for registration under this Law and the issuing of certificates of registration, and such fees may be prescribed on any basis, including an annual or other periodic basis.

(2) The Subordinate Legislation (Jersey) Law 1960^[3] shall apply to Orders made under this Article.

ARTICLE 7

Cancellation of registration

The Committee may at any time cancel any registration under Article 2 if -

- (a) it appears to it that the circumstances of the case are such that it would be justified in refusing to register the day care accommodation or day carer concerned;
- (b) the care provided at such accommodation or, by such day carer, is, in the Committee's opinion, seriously inadequate having regard to the needs of the children concerned;
- (c) there has been a contravention of, or non-compliance with, any requirement imposed under Article 4; or
- (d) there has been a failure to pay any fee charged under Article 6.

ARTICLE 8

Notice of decisions

- (1) Not less than 14 days before -
 - (a) refusing an application for registration under Article 2;
 - (b) cancelling any such registration;
 - (c) refusing consent under Article 3;
 - (d) imposing, removing or varying any requirement under Article 4; or
 - (e) refusing to grant any application for the variation or removal of any such requirement,

the Committee shall send to the applicant, to the occupier of the accommodation to which the registration relates or to the day carer registered, as the case may be, notice in writing of its intention to do so and the reasons for its decision.

(2) Every notice under paragraph (1) shall inform the addressee of his right to object to the decision by giving written notice to the Committee within 14 days of receipt of the notice, and where he does so, the Committee shall give him the opportunity to be heard in person or by a representative.

(3) If the Committee, after having complied with paragraph (2), nevertheless decides to take any of the steps described in paragraph (1), it shall give the person concerned written notice of its decision and inform him of his right to appeal under Article 9.

ARTICLE 9

Appeals

(1) A person aggrieved by a decision under Article 8(3) may, within one month from the receiving notice of that decision, appeal to the Royal Court on the ground that the decision is unreasonable in all the circumstances of the case.

(2) Where the court allows an appeal against the refusal or cancellation of any registration under Article 2 it may impose requirements under Article 4.

(3) Where the court allows an appeal against such a requirement it may, instead of cancelling the requirement, vary it.

(4) Where the court imposes or varies any requirement under paragraph (2) or (3) the requirement, or the requirement as varied, shall be treated for all purposes (other than this Article) as if it had been imposed by the Committee.

(5) A step of a kind mentioned in Article 8(1)(b) or (d) shall not take effect until the expiry of the time within which an appeal may be brought under this Article or, where such an appeal is brought, before its determination.

ARTICLE 10

Protection of children in an emergency

(1) Where the Committee cancels a registration under Article 7 varies, removes a requirement imposed under Article 4 or imposes an additional requirement under that Article it may apply to the court for an order that such cancellation, variation, removal or imposition shall have immediate effect.

(2) An application under paragraph (1) may be made *ex parte* and shall be supported by a written statement of the Committee's reasons for making it.

(3) The court may make an order under this Article if it is satisfied that a child who is being, or who may be, looked after by the day carer or at the day care accommodation concerned, as the case may be, is suffering, or is likely to suffer, significant harm.

(4) Where an order is made under this Article the Committee shall serve on the registered person, as soon as is reasonably practicable, notice of the order and a copy of the statement of its reasons for making the application.

ARTICLE 11

Power of entry and inspection

Any officer of the Committee may, subject to the production by him of evidence of his authority, at all reasonable times enter any premises and inspect -

- (a) the premises;
- (b) the children being looked after on the premises;
- (c) the arrangements made for the welfare of such children; and
- (d) any records relating to them kept as a result of this Law.

ARTICLE 12

Offences

A person who -

- (a) allows children to be received into day care accommodation which is not registered or exempted under Article 2;
- (b) acts as a day carer without being so registered or exempted;
- (c) contravenes Article 3;
- (d) makes, or causes or procures another person to make, any statement in an application for registration under Article 2 which he knows to be false or misleading in a material particular;
- (e) without reasonable excuse contravenes or fails to comply with -
 - (i) a requirement imposed on him under Article 4,
 - (ii) a condition attached to an exemption granted under Article 2(5), or

(iii) the provisions of Article 5(4); or

(f) intentionally obstructs an officer of the Committee exercising his powers under Article 11,

shall be liable to a fine not exceeding level 3 on the standard scale.^[4]

ARTICLE 13

Transitional provision

Any registration effected under Article 68 of the Children (Jersey) Law 1969^[5] which, had this Law been in force at the time of such registration, could have been effected under this Law, shall, on and after the commencement of this Law, have effect as if made under Article 2, and any requirement imposed under Article 69 of that Law^[6] with respect to such registration shall have effect as if it were imposed under Article 4.

ARTICLE 14

Citation and commencement

This Law may be cited as the Day Care of Children (Jersey) Law 200- and shall come into force on such day as the States may by Act appoint.

^[1] P.200/2001.

^[2] P.200/2001.

^[3] Tome VIII, page 849 and Volume 2001, pages 3 and 4.

^[4] Volume 1992-1993, page 437.

^[5] Volume 1968-1969, page 307 and Volume 1970-1972, page 513.

^[6] Volume 1968-1969, page 309.