

STATES OF JERSEY



DRAFT COVID-19 (MENTAL HEALTH) (JERSEY) REGULATIONS 202- (P.46/2020): COMMENTS

**Presented to the States on 20th April 2020
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

1. [P.46/2020](#) – Draft Covid-19 (Mental Health) (Jersey) Regulations 202- (the “draft Regulations”) was lodged by the Minister for Health and Social Services on 17th April 2020, in light of the ongoing Covid-19 pandemic.
2. The Panel would like to thank the Department of Health and Community Services for sharing the draft Regulations with it prior to formal lodging. It would also like to thank the Assistant Minister for Health and Social Services, departmental officers and Law Officers for briefing the Panel on the draft Regulations on 14th April 2020.
3. As outlined in the report accompanying P.46/2020, the draft Regulations propose to amend some of the existing statutory requirements set out on in the [Mental Health \(Jersey\) Law 2016](#) (the “2016 Law”) in order to support continued delivery of mental health services to those who are a risk to themselves or others during the Covid-19 period. The Panel was informed during the briefing of the need to introduce the proposed provisions, in order to address the significant pressures which may be placed on the Island’s healthcare system due to the current pandemic crisis. It was further advised that, in regard to mental health services, significant pressures could include –
 - unavailability of specialists / consultants to make detention and treatment decisions in accordance with existing legislative requirements due to staff absence levels;
 - the deployment of existing mental health staff to other priority healthcare services;
 - unavailability of UK-based specialists, including Second Opinion Approved Doctors, who are required to give second opinions in relation to specific types of treatment such as elect-convulsion therapy, and UK-based interim staff being unable to support delivery of Jersey services due to travel restrictions and/or pressures on the UK’s mental health system.
4. The Panel was advised that, like all the Covid-19-related legislation, the draft Regulations are time-limited and would expire on 30th September 2020. It was noted that the expiry date was a safeguard to ensure that any divergence from existing policy and practice was permitted for the shortest possible timeframe. The Panel raised concerns regarding when the draft Regulations would be ‘activated’ and how they would be used in practice. The Panel was advised that in addition to the expiry safeguard, Regulation 1 would provide an additional safeguard that meant that the Minister for Health and Social Services had to declare the start of an ‘extraordinary period’ by Order, in order for the proposed amendments to the 2016 Law to take effect. It was further advised that the Minister would only be able to declare an extraordinary period if he was satisfied that it was necessary due to Covid-19 disrupting the provision of care and treatment to people suffering a mental disorder. For instance, the Minister could not declare an extraordinary period on the grounds of a Covid-19 outbreak alone, and could only do so if the outbreak was disrupting mental health

services. The Panel was further assured that the Order would only be used when absolutely necessary, and the default would be the provisions under the current Law. The Panel queried how the Minister would determine when it was “absolutely necessary” to make an Order. It was advised that the Minister would be looking for advice from the Medical Director for Mental Health, Dr. Miguel Garcia, and operational staff, to determine if and when an extraordinary period should be declared. The Panel noted that the Order would last for a period of 28 days and the period could be reduced or extended where necessary, but could only be extended for up to another 28 days. It was further noted that the draft Regulations were in line with UK legislation.

5. The Panel was advised that Regulation 2 of the draft Regulations proposed changes to existing provisions which related to the detention and treatment of people who, due to their mental illness, presented a risk to themselves or others. It was noted that this included changes to existing controls and safeguards designed to protect the interests of these people. The Panel was assured that due to the significance of these changes, the provisions under Regulation 2 could only be activated if the Minister declared an extraordinary period. It was noted that the modifications included –

- Allowing an emergency admission under Article 15 to be made by a registered medical practitioner, who is not an approved practitioner (as defined in Article 1 of the 2016 Law), if an approved practitioner is not available. The draft Regulations also propose to extend the period of emergency admission from 72 hours to 120 hours to allow for sufficient time for assessment and care during periods of reduced staffing.
- Extending the existing 6-hour period in which a patient can be detained by a nurse due to concerns about their safety to up to 12 hours, allowing more time for them to be assessed by a clinician.
- Allowing an application for compulsory admission to hospital for assessment or treatment to be made on the recommendation of one rather than two registered medical practitioners. However, it was noted that this would only be used if it was determined that the requirement for two recommendations was impractical or would involve undesirable delays. The Panel queried the definition of undesirable delay, and was advised that it was a delay which put the welfare of the patient at risk, because they could not be assessed or provided treatment in a timely fashion.
- Allowing the Second Opinion Approved Doctor to consult only one person (instead of two) when providing a certificate allowing treatment to be given. It was noted that, where certain treatments are required and the patient does not have the capacity to give consent, the treatment can be provided if a Second Opinion Approved Doctor has certified that the treatment is beneficial for the patient. It was further noted, however, that the person consulted must be professionally involved in the patient’s treatment, but not their responsible medical officer.

- Allowing the Court to proceed on the basis of the evidence from one medical practitioner rather than two, but only where the Court determines that obtaining evidence from two practitioners would create undesirable delay, which would put the patient at risk. The Panel was advised that, whilst pre-emptive provision was being made for the Court to only seek evidence from only one practitioner, it was highly unlikely that this provision would be used, due to the small number of cases dealt with by the Court in any given year. The Panel noted that a practitioner would have to justify to the Court that it was in the best interest of the patient to proceed on this basis. It was further advised that the Assistant Minister was working to consult the Court about this proposed change, and would inform the Panel of the outcome of that consultation.
 - Extending the period under Article 69 within which a prisoner, in respect of whom a transfer order has been made, must be transferred to a specified approved establishment from 7 days to 28 days.
6. During the briefing, the Panel was provided with figures which demonstrated the number of times the relevant Articles within Part 9 of the Mental Health (Jersey) Law 2016 had been used between October 2018 to October 2019. It was noted that the figures would provide an understanding of how many people could be affected by the draft Regulations. The figures were as follows –
- Article 15 (Emergency admissions) – 15 recorded cases
 - Article 17 (Detention by a nurse) – 13 recorded cases
 - Article 41 (Second Opinion Approved Doctor) – 31 recorded cases
 - Article 69 (Transfer of Prisoner) – fewer than 5 recorded cases.
7. The Panel was advised during the briefing that the Medical Director of Mental Health had written to the Minister confirming his support of the draft Regulations, and his satisfaction that the draft Regulations were required and necessary during the extortory period. The letter was shared with the Panel following the briefing.
8. The Panel has reviewed the draft Regulations, albeit briefly given the current circumstances, and understands the rationale for its introduction at this stage. The Panel supports the enactment of the draft Regulations in the context of the current pandemic and would recommend that Members support the Proposition.