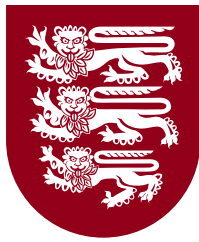


# STATES OF JERSEY



Jersey

## **DRAFT MENTAL HEALTH (YOUNG OFFENDERS) LAW (JERSEY) AMENDMENT REGULATIONS 202-**

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**Lodged au Greffe on 12th June 2024  
by the Minister for Justice and Home Affairs  
Earliest date for debate: 10th September 2024**

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**STATES GREFFE**

## REPORT

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Section A: Introduction

Section B: Background

Section C: Effects of the draft Mental Health (Young Offenders) Law (Jersey) Amendment Regulations 202-

Section D: Financial and staffing implications

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### Section A: Introduction

1. The draft Regulations seek to urgently address a longstanding issue with Part 9 of the [Mental Health \(Jersey\) Law 2016](#) ("the Mental Health Law") to enable a young person serving a sentence of youth detention in secure accommodation to access mental health treatment in an approved establishment in a timely or urgent manner.
2. In June 2014, Jersey became a State Party to the United Nations Convention on the Rights of the Child (UNCRC) when the UK's ratification was extended to the Island. As a result of this extension, Jersey is bound by the UNCRC under international Law and is subject to the monitoring and reporting processes of the UN Committee on the Rights of the Child. Article 4 of the UNCRC expects that State Parties to "*undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present convention*".
3. Furthermore, the [Children \(Convention Rights\) \(Jersey\) Law 2022](#) was approved by the States Assembly on the 30th March 2022. The Law embeds consideration of children's rights in the policy development and decision-making processes undertaken by the States Assembly and its Bodies, Ministers, Government Departments, and civil society organisations working with children and their families.
4. The amendments made by this draft legislation will enable Jersey Law to further meet Article 24 of the UNCRC, which states "*State Parties shall recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services*". The Mental Health Law as currently enacted does not fully comply with this UNCRC Article and therefore infringes on children's UNCRC rights in Jersey.
5. By enabling Jersey's Law to more fully recognise every child's right to access to health care services, Jersey is taking a further step towards further upholding the Articles of the UNCRC.

### Section B: Background

6. Article 69 of the Mental Health Law provides for the transfer of person serving a sentence of imprisonment or youth detention to an approved mental health establishment for treatment.
7. That transfer may take place, if the Royal Court orders it to, on the evidence of two registered medical practitioners (one of whom needs to be an approved practitioner under the Mental Health Law) that the prisoner is suffering from mental disorder of a nature or degree that requires treatment in an approved establishment. If that is the case the prisoner

is able to be detained in an approved establishment to enable that mental health treatment to take place.

8. Currently, Part 9 of the Mental Health Law sets out that a “prison” has the same meaning as given by Article 1(1) of the [Prison \(Jersey\) Law 1957](#) (“the Prison Law”) (see Article 60(1)(c) of the Mental Health Law).
9. Part 9 also contains references to a “prisoner”, in Article 69, a ‘prisoner’ is defined as a person detained in a prison and it is that definition of ‘prisoner’ which is applied through, but only for, that Article. In the absence of such a definition, it is understood that the definition of ‘prisoner’ as set out in the Prison Law applies (on the basis that the definition of ‘prison’ given in the Prison Law is applied in Part 9).
10. A ‘prisoner’ is defined in the Prison Law as including a person sentenced to youth detention. A Prison is also defined in the Prison Law as:

- “(a) the States of Jersey Prison at La Moye;*
- (b) any other prison which may be built;*
- (c) any building or part of a building designated to be a prison under Article 19(2); and*
- (d) any young offender institution;”*

11. The [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#) (“the Young Offenders Law”) defines “youth detention” as “*any sentence of detention imposed under this Law on a child, young person or young adult following conviction*” (Article 1(1)).
12. The Young Offenders Law also sets out that no court shall pass a sentence of imprisonment on a person under the age of 21 years (Article 3(1)). However, Article 4(1) of the Young Offenders Law provides that a court may pass a sentence of youth detention on the following categories of individual under the age of 21 (as defined in Article 1(1)):

- a child “*a person who has attained the age of 10 years and has not attained the age of 15 years*”,
- a young person “*a person who has attained the age of 15 years and has not attained the age of 18 years*”, or
- a young adult “*a person who has attained the age of 18 years and has not attained the age of 21 years*”.

13. The Young Offenders Law provides (see Article 4(2)) that, in cases where Article 5 of that Law does not apply (sentences fixed by law and other serious offences), a court shall not pass a sentence of youth detention unless it considers that no other method of dealing with that person is appropriate because it appears to the court that:

- “(i) the person has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them,*
- (ii) only a custodial sentence would be adequate to protect the public from serious harm from the person, or*
- (iii) the offence or the totality of the offending is otherwise so serious that a non-custodial sentence cannot be justified.”*

14. In sum, since the enactment of both the Young Offenders Law and subsequent [Criminal Justice \(Young Offenders\) \(No. 2\) \(Jersey\) Law 2016](#) (“the No. 2 Law”), it is the case that a child, a young person or a young adult who, on conviction, is given a custodial sentence will serve a sentence of youth detention, not a sentence of imprisonment. The Young Offenders Law makes provision for a Placement Panel which has a purpose, among others, to determine in which appropriate place of custody a child or young person should be remanded to so that they are able to serve their sentence of youth detention (Article 18). ‘Appropriate place of custody’ is defined in the Young Offenders Law as:

“(a) *secure accommodation in the case of a child or young person; or*  
(b) *in the case of a male young person only, a young offender institution.*”

15. In practice, the Placement Panel’s policy is to only use a Young Offenders Institution as a placement of absolute last resort. As such, the vast majority of children or young persons will serve their sentence of youth detention in “secure accommodation”.
16. The Criminal Justice (Young Offenders) (Jersey) Law 2014 sets out that the definition of “secure accommodation” is the same as the definition provided under Article 1 of the [Children \(Jersey\) Law 2002](#). That definition is that “secure accommodation” means “*accommodation provided by the [Children and Education] Minister for the purpose of restricting a child’s liberty*”.
17. It is therefore clear that the Government always intended that secure accommodation would become the primary setting, in Law, in which a child or a young person would serve their sentence of youth detention, with a Young Offenders Institution being a setting of absolute last resort. The original drafting instructions for the Mental Health Law include a section on Hospital Transfer Orders.
18. The section begins by setting out that the Prison Law contains a power for the Bailiff to direct that a prisoner requiring medical or surgical assessment or treatment should be transferred to hospital (see Article 18 of the Prison Law).
19. The instructions continue that “*HSSD proposes to provide the Royal Court with an additional power to order the transfer of a prisoner to a hospital, based on medical evidence.*”
20. These instructions resulted in Article 69 of the Mental Health Law which:

“*provides that the court may order the transfer of a prisoner from a prison to an approved establishment and the detention of the patient in that establishment (Article 69(1)) and, where a prisoner is discharged from that establishment but his sentence has not expired, that patient must be conveyed back to prison in accordance with directions given by the court (Article 69(9)).*”

21. However, given the specific terms used in the drafting of the Article, Article 69 cannot apply to a child or a young person where they are serving a sentence of youth detention and are held in secure accommodation. The Article would, however, apply if a young adult was serving a sentence of youth detention and held in a Young Offenders Institution, because such an institution falls within the applicable definition of ‘prison’.

22. The Interpretation provision that precedes Part 9 of the Mental Health Law (Article 60) sets out a number of matters that are applicable within just Part 9 of the Law. Article 60(1)(b) clearly states that for the purposes of Part 9:

*“a reference to an offence punishable with imprisonment includes reference to an offence for which a person under 21 years of age may be sentenced to youth detention under the Criminal Justice (Young Offenders) (Jersey) Law 1994 or the Criminal Justice (Young Offenders) (Jersey) Law 2014, as the case may be”.*

23. Therefore, it is clear that the intention of Part 9 of the Mental Health Law is that those persons under 21 and sentenced to youth detention are subject to the provisions of Part 9. In practice, as per Government policy those persons must, if they are under 18, serve that youth detention in secure accommodation which is not included in the current reach of Article 69.

### **Section C: Effects of the draft Mental Health (Young Offenders) Law (Jersey) Amendment Regulations 202-**

24. The draft Regulations seek to amend Article 60 and Article 69 to enable a reference to a sentence of imprisonment to include a reference to a sentence of youth detention for the purposes of Part 9 of the Mental Health Law.
25. This would enable the provisions of Article 69 to include persons serving a sentence of youth detention in secure accommodation, this would finally achieve the original policy aspiration of both the Mental Health Law, the Young Offenders Law and the No. 2 Law.
26. Regulation 2 updates the outdated cross reference to the Criminal Justice (Young Offenders) (Jersey) Law 1994 and widens the definition of both “place of safety” and “prison” to include reference to secure accommodation.
27. Regulation 3 substitutes the existing Article 69 with an updated version. The updated version of Article 69 restates the order making power of the Royal Court and extends those powers to apply where a young person is serving a sentence of youth detention in secure accommodation. The existing rules for renewal of an initial period of detention, and for the discharge of that person upon expiry of their sentence or application for discharge made to the court are clarified and replicated.

### **Section D: Financial and staffing implications**

28. There are no significant financial or staffing implications that would result from the adoption of the draft Regulations.

### **Section E: Children’s Rights Impact Assessment**

29. A Children’s Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

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## EXPLANATORY NOTE

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The Mental Health (Young Offenders) Law (Jersey) Amendment Regulations 202- (the “Regulations”), if passed, will amend the Mental Health (Jersey) Law 2016 (the “Law”). The effect of the amendments is to extend the scope of Article 69 of the Law to apply to children, and young people under the age of 21, serving a sentence of youth detention in secure accommodation (“young offenders”). The amendments would enable the transfer of young offenders from secure accommodation to an establishment approved under the Law, and enable their detention in the approved establishment for treatment for a mental disorder.

*Regulation 1* states that the Regulations amend the Law.

*Regulation 2* amends Article 60 of the Law, which is the interpretation provision for Part 9 (powers of court in relation to accused persons suffering mental disorder) of the Law. The amendment removes an obsolete reference to the Criminal Justice (Young Offenders) (Jersey) Law 1994 and extends references to “prison” to include “secure accommodation”. A further provision is added to make it clear that a reference to a sentence of imprisonment includes a sentence of youth detention.

*Regulation 3* substitutes Article 69 of the Law. The effect of the substitution is to restate the current transfer and detention order making powers of the Royal Court in respect of people serving a sentence of imprisonment or youth detention in the prison estate, and to extend those powers to apply in respect of young offenders serving a sentence of youth detention in secure accommodation. The amendment would enable the court to order the transfer of young offenders from secure accommodation to an approved establishment and for them to be detained there for an initial period of 6 months in order to receive treatment for a mental disorder. The existing rules for renewing an initial period of detention for a further period of 6 months or successive periods of 12 months and for the person’s discharge from detention upon the expiry of their sentence, or upon a successful application to court, are clarified and replicated for the purpose of young offenders who are subject to a transfer and detention order under Article 69, as amended.

*Regulation 4* provides for the title by which the Regulations may be cited and for them to come into force 7 days after they are made.



Jersey

## **DRAFT MENTAL HEALTH (YOUNG OFFENDERS) LAW (JERSEY) AMENDMENT REGULATIONS 202-**

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Jersey

## DRAFT MENTAL HEALTH (YOUNG OFFENDERS) LAW (JERSEY) AMENDMENT REGULATIONS 202-

Made [date to be inserted]

Coming into force [date to be inserted]

**THE STATES** make these Regulations under Article 32(1) of the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#) –

### 1 Amendment of the [Mental Health \(Jersey\) Law 2016](#)

These Regulations amend the [Mental Health \(Jersey\) Law 2016](#).

### 2 Article 60 (interpretation and application of Part 9) amended

- (1) In Article 60(1)(b) for “the Criminal Justice (Young Offenders) (Jersey) Law 1994 or the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#), as the case may be” there is substituted “the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#) (the “Young Offenders Law”)”.
- (2) After Article 60(1)(b) there is inserted –
  - “(ba) a reference to a sentence of imprisonment includes reference to a sentence of youth detention under the Young Offenders Law;”.
- (3) In Article 60(1)(c) –
  - (a) in the definition “place of safety”, for “a prison” there is substituted “the prison or secure accommodation”;
  - (b) after the definition “prison” there is inserted –
    - ““secure accommodation” has the meaning given by Article 1(1) of the [Children \(Jersey\) Law 2002](#).”.

### 3 Article 69 (transfer orders) substituted

For Article 69 there is substituted –

#### “69 Transfer and detention orders

- (1) This Article applies in respect of a person detained in prison or secure accommodation.



- (2) The court may order the transfer of a person from prison or secure accommodation to an approved establishment, and the detention of the person in that establishment for an initial period of 6 months (a “transfer and detention order”) if the court is satisfied –
  - (a) on the evidence of 2 registered medical practitioners, at least one of whom must be an approved practitioner, that the person is suffering from a mental disorder of a nature or degree that makes it appropriate for the person to be detained in an approved establishment for treatment;
  - (b) that the person should be transferred and detained in the public interest; and
  - (c) on the written or oral evidence of the approved practitioner responsible for giving the evidence under sub-paragraph (a), or another person representing the managers of the approved establishment, that arrangements have been made to admit the person to that establishment within the period of 7 days beginning with the date of the order.
- (3) Evidence under paragraph (2)(a) –
  - (a) must be given in writing signed by the practitioners who have personally examined the person either jointly or, if separately, at an interval of not more than 5 days; and
  - (b) must specify the form of mental disorder from which the person is found to be suffering.
- (4) In an emergency, the court may waive the requirement for written evidence under paragraph (3)(a) and the evidence may be given orally.
- (5) If the court makes a transfer and detention order in respect of a person –
  - (a) the person must be taken to the approved establishment within the period of 7 days beginning with the date of the order and in accordance with any directions given by the court for that purpose;
  - (b) the person’s initial 6-month period of detention (the “initial period”), begins with the date of the order; and
  - (c) the managers of the approved establishment must admit the person and detain them until one of the following occurs –
    - (i) the initial period expires,
    - (ii) the person’s sentence of imprisonment expires, or
    - (iii) the court orders the person’s discharge from the approved establishment under paragraph (12).
- (6) The initial period may be renewed for one further period of 6 months and then for successive periods of 12 months.
- (7) Any application to renew a period of detention must be made to the court by the Attorney General on the grounds that, in the opinion of the responsible medical officer –
  - (a) the person is suffering from mental disorder of a nature or degree that makes it appropriate for them to be detained in an approved establishment for treatment; and
  - (b) the person should continue to be detained in the public interest.

- (8) A renewed period of detention begins immediately after the previous period expires.
- (9) The managers of the approved establishment must continue to detain a person who is the subject of a renewed period of detention until one of the following occurs –
  - (a) the renewed period expires;
  - (b) the person’s sentence of imprisonment expires; or
  - (c) the court orders the person’s discharge from the approved establishment under paragraph (12).
- (10) A person whose sentence of imprisonment has not expired may be discharged from the approved establishment to which they have been transferred, on an application made to the court –
  - (a) by that person; or
  - (b) by the Attorney General.
- (11) An application under paragraph (10) must be made on the ground that, in the opinion of the responsible medical officer, it is no longer necessary for the person to be detained in an approved establishment for treatment.
- (12) If, further to an application under paragraph (10), the court orders the person’s discharge from the approved establishment, the person must be taken to prison or secure accommodation in accordance with any directions given by the court for that purpose.
- (13) The person taken to prison or secure accommodation under paragraph (12) must be –
  - (a) admitted by the prison Governor or person responsible for managing the secure accommodation; and
  - (b) dealt with as if no transfer and detention order had been made in respect of that person.”.

#### **4 Citation and commencement**

These Regulations may be cited as the Mental Health (Young Offenders) Law (Jersey) Amendment Regulations 202- and come into force 7 days after they are made.