

Multi-agency submission regarding P.46/2020 Draft covid-19 (mental health) (jersey) regulations 202- and P.47/2020 Draft covid-19 (capacity and self-determination) (jersey) regulations 202-

Introduction

Several organisations working alongside families, people who experience mental illness, people with disabilities, and working in the field of children's rights. We are concerned about many aspects of P.46/2020 and P.47/2020.

We have identified several aspects where a human rights lens does not seem to have been applied and are concerned that the application of this amend, if passed, could severely compromise the rights of individuals, without the proportionality of these moves being sufficiently considered, nor mitigation effectively outlined.

We represent the Children's Rights Team (CYPES), Jersey Cares (working with people with experience of care), Enable (working with people with disabilities), My Voice (independent advocacy: acute mental health) and Brighter Futures (supporting families)

Human Rights Lens

Although, Jersey may change its own laws, international law still applies. The Propositions, as currently drafted, risk breaching standards of international law in several respects.

Many human rights organisations have raised concerns about Coronavirus-related emergency legislation in British jurisdictions and elsewhere, and these concerns would apply equally to Jersey's emergency laws. In the UK, Reports from the Bingham Centre on the Rule of Law, and the scrutiny process by the Joint Parliamentary Committee on Human Rights, are taking a detailed and rigorous approach to the necessary restrictions on rights. Jersey needs to do the same; the wealth of research from other jurisdictions can be a basis, but it cannot be assumed to be transferable to Jersey without academic or scientific rigour in the evidential basis for those restrictions. International human rights law was designed to allow interference with some, but not all, human rights in an emergency situation, on the ground of protecting public health. This is not just a matter of universal human rights: there are also specific provisions guaranteeing the highest possible standards of healthcare for children and for people with disabilities (defined widely in international law). There is no exception to the duty to protect people from inhuman and degrading treatment and punishment.

Restrictions on rights must be the least intrusive necessary to achieve their legitimate (public health) aim, and the manner in which restrictions on rights are implemented must be: based on scientific evidence; free from arbitrariness and discrimination; of limited duration; respectful of human dignity; and under regular review. These international standards were introduced for extremely good reasons and can only be met by a considered and rights-centred approach to the imposition of any necessary restrictions. Rushed changes breach international human rights law remarkably often, and indeed needlessly.

CHANGES TO THE LAW MUST BE NECESSARY, PROPORTIONATE, SUBJECT TO DEMOCRATIC SCRUTINY, REVIEWABLE BY COURTS, TRANSPARENT, AND TIME-LIMITED.

As noted by the Bingham Centre's Rule of Law Monitoring of the UK Coronavirus Bill, it is not enough for a Government to make an assertion that a measure is necessary due to emergency and then implement that measure. There must be some form of independent scrutiny, there must be a right of access to a court or tribunal to challenge decisions made under it, and these basic democratic principles apply even in an emergency. Rushing to amend Laws which protect fundamental rights raises serious concerns, since it is necessary in any democracy for members of the assembly to have appropriate time to consider changes and their potential impact. When Laws have been introduced so recently in order to protect the rights of people who are deprived of their liberty and/or whose decision-making capacity is questioned, there must be a clear explanation of why and when it would be necessary to depart from those hard-fought and carefully-considered Laws, with a strong evidential basis to support such departure, and with independent scrutiny and a fast-track route for legal challenges. Funding will also need to be made available for such challenges.

Any restrictions imposed on Laws which protect fundamental human rights should be clearly drafted to state that they apply no longer than is necessary, as well as having a maximum duration before review. There needs to be a clear timeline for regular review, published in advance, and the States Assembly should be provided with regular reports in a standard format on matters such as how often each restriction has been used, and whether there is still a strong evidential basis that each restriction is necessary.

Concerns about P.46/2020, Draft covid-19 (mental health) (jersey) regulations 202-

What will be the date, time and method for review of these powers?

How are Orchard House evidencing lack of capacity to offer business as usual (when prisoners are waiting up to 28 days, rather than 7 days for treatment in an appropriate facility)?

During this 28-day period, what provision is in place within the prison, to meet the mental health needs of these people?

Concerns about P.47/2020, Draft covid-19 (capacity and self-determination) (jersey) regulations 202-

Introduction: The draft Regulations set out that the Minister may, on receipt of a written application, authorise the manager of care facility to impose, on an interim basis only, significant restrictions on liberty on an individual person. This is known as an 'interim authorisation', as distinct from a 'standard authorisation' as provided under the 2016 Law.

Concerns

Can we see the risk assessment, evidential basis and assumptions for necessity of these measures?

Actions

We ask that this Proposition is withdrawn as it breaches international law and deprives individuals of liberty without due regard to the proportionality of this measure, nor does it detail effective mitigation of abuse of powers.