



Jersey

## DRAFT CHILDREN AND YOUNG PEOPLE (INDEPENDENT ADVOCATES) (JERSEY) REGULATIONS 202-

### Contents

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#### Regulation

1	Interpretation .....	2
2	Requirement to appoint independent advocates in respect of qualifying people .....	2
3	Requirement to ensure awareness of the services of independent advocates .....	3
4	Arrangements in respect of the appointment of independent advocates.....	3
5	Eligibility for appointment of independent advocates .....	4
6	Duties of independent advocate .....	4
7	Nature of advocacy services to be provided by independent advocates.....	5
8	Ending of services by independent advocates .....	6
9	Termination of appointment of independent advocates .....	6
10	Amendment of Article 44 (independent advocates) of the CYP Law .....	6
11	Citation and commencement .....	7



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# DRAFT CHILDREN AND YOUNG PEOPLE (INDEPENDENT ADVOCATES) (JERSEY) REGULATIONS 202-

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES** make these Regulations under Articles 44 and 46 of the Children and Young People (Jersey) Law 2022 –

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## 1 Interpretation

In these Regulations –

“advocacy service provider” means a person other than the Minister (including a voluntary organisation) that employs or engages people to provide services as independent advocates;

“enhanced criminal record certificate” means a certificate issued under section 113B of the Police Act 1997 of the United Kingdom as extended to Jersey, with modifications, by the Police Act 1997 (Criminal Records) (Jersey) Order 2010 (S.I. 2010/765 of the United Kingdom);

“code of practice” means a code of practice issued under Article 44 of the CYP Law;

“CYP Law” means the Children and Young People (Jersey) Law 2022;

“qualifying people” has the meaning given in Regulation 2 and “qualifying individual” is construed accordingly.

## 2 Requirement to appoint independent advocates in respect of qualifying people

- (1) For the purposes of Article 44(1) of the CYP Law, the Minister must, in accordance with Regulation 3, appoint independent advocates to act in relation to, or on behalf of –
  - (a) the people listed in Article 44(1)(a) to (c) of the CYP Law; and
  - (b) the people listed in paragraph (2) for the purposes of Article 44(1)(d) and (6) of the CYP Law.
- (2) Further to paragraph (1)(b), the people are –
  - (a) children and young people who are the subject of arrangements to safeguard their welfare and, in particular, arrangements of the type described in Article 5(3)(a) of the CYP Law;

- (b) pupils (as defined in the Education Law) who, under Article 36 of the Education Law, are suspended or expelled from a provided school (as defined in the Education Law);
  - (c) parents and siblings of children who are the subject of –
    - (i) a care order under Article 24 of the Children Law, or
    - (ii) an interim care order under Article 30 of the Children Law; and
  - (d) parents of children who already have an independent advocate acting on behalf of their children under paragraph (1)(a) or (2)(a) or (b) if the Minister considers that, without the services of their own independent advocate, those parents –
    - (i) would experience substantial difficulty in effectively expressing their views, wishes and feelings in the matters for which an independent advocate is acting in relation to their children, or
    - (ii) are otherwise at significant risk of not being able to participate fully in the matters for which an independent advocate is acting in relation to their children.
- (3) People in respect of whom independent advocates are appointed to act are referred to in these Regulations as “qualifying people”.

### **3 Requirement to ensure awareness of the services of independent advocates**

The Minister must make reasonable arrangements that provide for steps to be taken to ensure that qualifying people are aware of the availability of the services of independent advocates.

### **4 Arrangements in respect of the appointment of independent advocates**

- (1) The Minister may appoint independent advocates directly or may arrange for an advocacy service provider to appoint independent advocates.
- (2) The Minister or advocacy service provider must not appoint a person to be an independent advocate unless the Minister or provider is satisfied that the person is eligible to be appointed as an independent advocate under Regulation 5.
- (3) The Minister or advocacy service provider must, as soon as reasonably practicable after an independent advocate has been appointed to act in relation to a qualifying individual, arrange for the independent advocate to be introduced to the qualifying individual.
- (4) The Minister or advocacy service provider must record when the introduction took place.
- (5) If the Minister enters into an arrangement with an advocacy service provider for the appointment of independent advocates, the arrangement must include a requirement that the provider complies with the obligations set out in paragraphs (2) to (4) and has regard to the code of practice (if any) when discharging their functions under these Regulations.
- (6) An advocacy service provider who has entered into an arrangement with the Minister is entitled to the payment of fees, expenses and allowances in accordance with those arrangements.

## 5 Eligibility for appointment of independent advocates

A person is eligible for appointment as an independent advocate if the person –

- (a) has appropriate experience and training in advocacy for the purposes of these Regulations;
- (b) has a good knowledge of enactments concerning children and young people and, in particular –
  - (i) Parts 1, 4, 5, 7, 8 and 9 of the CYP Law,
  - (ii) Parts 3, 4 and 5 of the Children Law,
  - (iii) Part 6 of the Education Law, and
  - (iv) the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#);
- (c) has a good knowledge of policies and guidance produced under, or in relation to, the enactments listed in sub-paragraph (b);
- (d) has a good understanding of the United Nations Convention on the Rights of the Child;
- (e) has a good understanding of, and ability to communicate with, qualifying people –
  - (i) who are from cultural or ethnic groups for whom English may not be their first language, or
  - (ii) who have physical or sensory impairments, learning disabilities or autistic spectrum disorders;
- (f) provides evidence of their integrity and good character, including an enhanced criminal record certificate;
- (g) is independent of the administration of the States for which the Minister is responsible; and
- (h) meets any other eligibility criteria that the Minister specifies in the code of practice (if any).

## 6 Duties of independent advocate

- (1) An independent advocate must advise a qualifying individual of the advocacy services that the independent advocate is to provide to the qualifying individual under Regulation 7.
- (2) An independent advocate must, so far as reasonably practicable and having regard, if appropriate, to the qualifying individual's age and maturity, take steps to ensure that the individual understands –
  - (a) the nature of the advocacy services that are available;
  - (b) that the services are provided free of charge; and
  - (c) that there is no obligation to receive those services.
- (3) The independent advocate must, when delivering advocacy services to a qualifying individual, take steps to ensure that the qualifying individual's welfare is put first.
- (4) The independent advocate must, so far as reasonably practicable and having regard, if appropriate, to the qualifying individual's age and maturity, take steps to ensure –
  - (a) that advocacy services are delivered in a timely manner;

- (b) that the qualifying individual is enabled to make their own choices or decisions, and to express their own views, wishes and feelings in relation to decisions that affect them; and
  - (c) that the qualifying individual's consent is obtained if the circumstances so require.
- (5) Independent advocates must have regard to the code of practice (if any) when discharging their functions under these Regulations.

## **7 Nature of advocacy services to be provided by independent advocates**

- (1) This Regulation sets out the advocacy services to be provided by independent advocates to qualifying people, so far as it is appropriate to do so in each qualifying individual's case and, having regard, if appropriate, to the individual's age and maturity.
- (2) An independent advocate, whether appointed directly by the Minister or by an advocacy service provider, is prohibited from charging qualifying people for the provision of advocacy services.
- (3) The advocacy services to be provided to qualifying people must include –
- (a) help to obtain information about, and to understand –
    - (i) the enactments that apply to or are otherwise relevant in respect of qualifying people, and
    - (ii) the rights, if any, that qualifying people may exercise under those enactments;
  - (b) help to enable qualifying people to express their views, wishes and feelings effectively in relation to the information provided under sub-paragraph (a);
  - (c) help to enable qualifying people to exercise their rights, if any, under an enactment; and
  - (d) help to enable qualifying people to make a complaint or other representation under the procedure referred to in Article 45 of the CYP Law, including representing qualifying people in the procedure.
- (4) For the purposes of providing help under paragraph (3), an independent advocate may, to the extent that it is reasonably practicable and appropriate to do so in each qualifying individual's case –
- (a) interview the qualifying individual;
  - (b) consult a person who, to the independent advocate's knowledge or belief, is concerned with the qualifying individual in a professional capacity; or
  - (c) consult a person who, to the independent advocate's knowledge or belief, is concerned with the qualifying individual in a supportive personal capacity.
- (5) In this Regulation, "interview" includes –
- (a) visiting the qualifying individual and, if the individual is a child, their parents; or
  - (b) conducting an interview with the qualifying individual remotely by means of an electronic device and, if the individual is a child, with their parents.

## 8 Ending of services by independent advocates

- (1) An independent advocate must stop providing advocacy services to a qualifying individual –
  - (a) 90 days after the qualifying individual ceases to be a qualifying individual;
  - (b) immediately after the qualifying individual informs the independent advocate that they no longer wish to receive the services of the independent advocate; or
  - (c) on the date specified in the notice of termination of appointment given under Regulation 9.
- (2) If the appointment of an independent advocate is terminated, the Minister or advocacy service provider must, having regard, if appropriate, to the qualifying individual's age and maturity, take all reasonable steps to ensure that the qualifying individual is informed –
  - (a) as soon as reasonably practicable after notice of the termination has been given under Regulation 9; and
  - (b) the details of the replacement independent advocate who has been appointed to provide advocacy services to the qualifying individual.

## 9 Termination of appointment of independent advocates

- (1) If the Minister or an advocacy service provider is satisfied that an independent advocate is no longer eligible for appointment under Regulation 5, the Minister or provider, as the case may be, must terminate the appointment.
- (2) The Minister or advocacy service provider must, as soon as reasonably practicable, give the independent advocate notice in writing of the termination of their appointment which must –
  - (a) include the reasons for the termination;
  - (b) include arrangements for the stopping of the advocacy services provided in the case of each qualifying individual affected by the termination of the appointment; and
  - (c) specify the date on which the termination takes effect.
- (3) In the case of an advocacy service provider that terminates the appointment of an independent advocate, the provider must inform the Minister, as soon as reasonably practicable after notice of the termination of appointment has been given.

## 10 Amendment of Article 44 (independent advocates) of the CYP Law

- (1) In Article 44(6) of the CYP Law, for “The States may by Regulations” there is substituted “Regulations under this Article may require the Minister to”.
- (2) After Article 44(7) of the CYP Law there is inserted –
  - “(7A) The Minister may issue a code of practice for the purposes of this Article, which may, among other things, include –
    - (a) guidance for independent advocates as to the carrying out of their functions; and
    - (b) eligibility criteria for the appointment of independent advocates.

- (7B) The Minister must publish the code of practice, review it periodically and publish it when revised.
- (7C) Before issuing or revising a code of practice, the Minister must consult persons who appear to the Minister to have an interest.”.

## 11 Citation and commencement

These Regulations may be cited as the Children and Young People (Independent Advocates) (Jersey) Regulations 202- and come into force on the commencement of the Children and Young People (Jersey) Law 2022.