

SARK STATUTORY INSTRUMENT

2021 No. 4

The Child Protection (Sark) Regulations, 2021

<i>Made</i>	10 th September 2021
<i>Coming into operation</i>	10 th September, 2021
<i>Laid before the Chief Pleas</i>	6 th October, 2021

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SCHEDULE Additional Functions of MASH



The Child Protection (Sark) Regulations, 2021

THE EDUCATION COMMITTEE, in exercise of the powers conferred on it by sections 9(2)(b), 12 and 17 of the Child Protection (Sark) Law, 2020^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Duty to inquire.

1. (1) Upon receiving a notification under section 7(1)(b) or (3)(b) of the Ordinance or a referral under section 11(1) of the Law, MASH –

- (a) must initiate any initial inquiries it considers necessary and practicable in accordance with its procedures in order to ascertain whether an investigation is needed, and
- (b) may make inquiries with the person making the notification or referral and any other person it considers necessary for this purpose.

(2) Subject to paragraph (3), MASH must start an investigation in any case where –

- (a) a police officer exercises any power in relation to a child under section 39 of the Law, or
- (b) having made initial inquiries, MASH considers that compulsory intervention may be needed in respect of a child.

^a Order in Council No. XIII of 2020.

(3) Where compulsory intervention appears to be needed wholly or mainly as a result of a child's failure to attend school falling within the condition for compulsory intervention specified in section 10(2)(f) of the Law –

- (a) MASH must refer the matter to the Committee, and
- (b) the Committee is responsible for investigating the matter and the need for compulsory intervention in respect of the child.

(4) If MASH decides that an investigation is not necessary, it must record –

- (a) the inquiries it has carried out, or caused to be carried out,
- (b) the reason for the decision it has reached, and
- (c) any advice given or services offered by MASH to the child or the child's family.

(5) In accordance with its procedures, MASH may give any person information about the outcome of its initial inquiries where it considers this necessary and appropriate.

Duty to investigate.

2. (1) Subject to the following subsections and section 17 of the Law, MASH must start and carry out an investigation in accordance with its procedures.

(2) When carrying out an investigation, MASH must –

- (a) make or cause to be made all necessary enquiries in order to assess –
 - (i) whether there is sufficient evidence of one or more of the conditions for compulsory intervention listed in section 10(2) (other than section 10(2)(f)) of the Law,
 - (ii) what action should be taken to ensure the provision of adequate care, protection, guidance or control for the child, and
 - (iii) if there is, or appears to be, any person able and willing to exercise parental responsibility so as to provide the child with such care, protection, guidance or control,
- (b) see the child or cause the child to be seen unless it is satisfied that it already has sufficient information about the child,
- (c) ascertain the child's wishes, feelings and views in a manner appropriate to the child's age and understanding unless MASH is satisfied that it already has sufficient relevant information, and
- (d) decide whether compulsory intervention may be necessary to ensure the provision of adequate care, protection, guidance or control for the child.

(3) So far as is practicable and consistent with the child's welfare, MASH must ascertain and take account of the child's wishes and feelings about the action proposed to be taken.

(4) If MASH starts an investigation, it must record –

(a) the inquiries it has carried out or caused to be carried out,

(b) the decision it has reached concerning the child to whom the investigation relates, and

(c) the reason for the decision.

(5) If, having concluded an investigation, MASH is satisfied that compulsory intervention may be necessary to ensure the provision of adequate care, protection, guidance or control for a child, it must refer the matter to the Court in accordance with section 17(1) of the Law.

(6) If, during the course of an investigation, access to a child is denied, or information about the child's whereabouts is required, MASH must apply to the Court for an emergency child protection order unless MASH is satisfied that the child's welfare can be protected without making such an application.

(7) Where, following an investigation, MASH decides that compulsory intervention in relation to a child is not necessary, MASH –

(a) must notify the decision to the following persons –

(i) in any case where the matter was referred to MASH under section 11(1) of the Law, the

person who made the referral,

- (ii) in any case where the matter was notified to MASH by a public authority under section 7(1)(b) of the Ordinance, the public authority,
 - (iii) in any case where the matter was notified to MASH by the safeguarding lead of a public authority under section 7(3)(b) of the Ordinance, that safeguarding lead,
 - (iv) in any case where the matter was notified to MASH by any person under section 8(1) of the Ordinance and the person requests that officer to treat it as a referral under section 11(1) of the Law, or MASH otherwise considers it appropriate to notify the person, that person,
 - (v) in any case where a person gives MASH a report or any other information in response to a request or requirement made by MASH under regulation 3 or any provision of the Law or the Ordinance, that person, and
 - (vi) where MASH refers the matter under section 17(5)(b) of the Law, the Committee or other person to whom the matter is referred, and
- (b) may notify the decision to all or any of the following –
- (i) the child (in a manner appropriate to the child's

age and understanding),

- (ii) the parents of the child,
- (iii) a person, other than a parent, who has parental responsibility for the child,
- (iv) a father or mother of the child, who does not have parental responsibility for that child,
- (v) any member of the child's family or any person who had care of the child at the time of the investigation,
- (vi) any person that gave MASH any information in respect of the child, and
- (vii) any other person that MASH thinks fit.

(8) In accordance with its procedures, MASH may give any person information about the outcome of any investigation where it considers this necessary and appropriate.

MASH may require reports.

3. (1) This section applies to any public authority that MASH believes may hold information relating to a child who is the subject of an investigation carried out by MASH.

(2) Where MASH considers it necessary to do so for the purpose of the investigation, MASH may request the public authority to give MASH a written report on the child and such matters concerning the child as MASH may specify.

(3) A person requested to provide a report under this section must give MASH the report as soon as practicable.

(4) Nothing in this section limits the generality of MASH's powers under section 13 of the Law.

Persons who may attend referral meetings.

4. The persons who may attend a referral meeting (convened for the purposes of section 17(2) of the Law or paragraph 1 of the Schedule) are –

- (a) the child to whom the meeting relates,
- (b) a parent of the child,
- (c) a person, other than a parent, who has parental responsibility for the child,
- (d) any person who appears to ordinarily (and other than by reason of the person's employment) have care of the child,
- (e) the legal representative of any person described in paragraph (a), (b) or (c),
- (f) a supporter, and
- (g) any other person that MASH thinks fit.

Issues to be considered or determined at referral meetings.

5. The issues to be considered or determined at a referral meeting are –

- (a) any question concerning who should be –
 - (i) a party to the proceedings,
 - (ii) given notice of the referral or the review concerned, or
 - (iii) entitled or permitted to attend any hearing before the Court,

- (b) in the case of a referral under section 17(1) of the Law, the extent to which –
 - (i) the condition for referral stated by MASH, or
 - (ii) the statement of fact made by MASH in support of any such condition,is, or is not, accepted by any prescribed person, and

- (c) any other issues the determination or consideration of which is necessary or desirable to ensure the speedy resolution of any matter which may fall to be determined or considered at any hearing before the Court.

Prescribed persons under section 17 of the Law.

6. (1) Subject to paragraph (2), the persons prescribed for the purposes of section 17(2) of the Law ("**prescribed persons**") are –

- (a) where the child is aged 12 years or more, that child,

(b) where –

(i) the child is aged less than 12 years, and

(ii) one or more of the conditions under section 10(2)(c), (d) or (f) of the Law apply,

that child,

(c) any person who has parental responsibility for the child,

(d) any person who appears to ordinarily (and other than by reason of the person's employment) have care of the child, and

(e) MASH.

(2) For the purposes of section 17(3) of the Law, where it appears to MASH that any prescribed person lacks the capacity to understand any –

(a) condition for referral of a case to the Court, or

(b) statement of fact made by MASH in support of any such condition,

the prescribed person will be treated as not having accepted any such condition or statement.

Additional functions of MASH.

7. (1) In addition to its functions under the Law and the Ordinance, MASH must –
- (a) communicate to persons in Sark the need to safeguard and promote the welfare of children, raise their awareness of how this can best be done and encourage them to do so, and
 - (b) undertake reviews of serious cases in which abuse or neglect of a child is known or suspected and –
 - (i) the child has died, or
 - (ii) the child has been seriously harmed and there is cause for concern as to the way in which any persons or agencies have worked together to safeguard the child.
- (2) The Schedule has effect.

Interpretation.

8. (1) In these Regulations, unless the context requires otherwise –

"**child's representative**", in relation to any proceedings, means any child's representative appointed under rules of court in respect of those proceedings,

"**the Law**" means the Child Protection (Sark) Law, 2020,

"**MASH**", for the avoidance of doubt, means the Multi-Agency Safeguarding Hub established by section 9 of, and Schedule 1 to, the Law,

"the Ordinance" means the Child Protection (Sark) Ordinance, 2021^b,

"parties to the proceedings", in relation to any proceedings arising from a referral by MASH of any case or matter to the Court, includes MASH (for the avoidance of doubt),

"prescribed person", in relation to any referral to the Court under section 17(1) of the Law, means a person prescribed by regulation 6(1) in relation to the referral,

"proceedings" means proceedings before the Court following a referral to the Court under section 17(1) or 54(2) of the Law or in connection with the review of a care requirement under section 10 of the Ordinance,

"public authority" has the meaning given by section 7(4) of the Ordinance,

"referral meeting" means a meeting convened for the purposes of section 17(2) of the Law or paragraph 1 of the Schedule, and

"supporter" means a person who accompanies a party to the proceedings for the purposes of assisting and supporting the party at a hearing before the Court; but a person who is a party to the proceedings may not be the supporter of another party.

(2) For the purposes of these Regulations, whether a child has or has not reached the age of 16 years at any given time is to be determined in accordance with section 14(3) of the Ordinance.

^b Sark Ordinance No. V of 2021.

Citation.

9. These Regulations may be cited as the Child Protection (Sark) Regulations, 2021.

Commencement.

10. These Regulations come into force on 10th September 2021.

Dated this 10th day of September 2021

A handwritten signature in black ink, appearing to read 'Nichola Mc Hugh', written in a cursive style.

Conseiller Nichola Mc Hugh
Chairman of the Education Committee
For and on behalf of the Committee

SCHEDULE

Reg. 7(2)

ADDITIONAL FUNCTIONS OF MASH

Optional referral meetings

Referral meeting may be arranged before certain proceedings.

1. In the case of a review of a care requirement under section 10 of the Ordinance, or the case of a child referred by MASH to the Court under section 54(2) of the Law, MASH may arrange for a meeting to be held prior to the holding of the hearing before the Court concerning the review or case, if MASH believes that it is necessary or desirable to ensure the speedy resolution of the review or case.

Notice of referrals under s. 17 of the Law

Notice of referral to the Court under section 17(1) of the Law.

2. Where MASH has referred a matter to the Court under section 17(1) of the Law, MASH must, in relation to each prescribed person –

- (a) serve on the person a statement setting out –
 - (i) the condition for referral of the matter to the Court, and
 - (ii) the facts in support of the condition, and
- (b) inform that person in writing (or orally, where it is not practicable to inform the person in writing) of that person's right to be legally represented at the proceedings.

Notice (and documents) relating to referral meetings and certain hearings

Notice of referral meeting.

3. Where MASH arranges for any referral meeting to be held, MASH must, where practicable at least seven days before the date of the meeting, inform the persons who are entitled or (as the case may be) invited to attend the meeting in writing (or orally, where it is not practicable to inform the person in writing) of –

- (a) the date and time of the meeting,
- (b) the place at which the meeting is to be held, and
- (c) the issues to be considered at the meeting.

Notice of hearing before Court.

4. MASH must, where practicable at least seven days before the date of any Court hearing on a referral under section 17(1) or 54(2) of the Law, give notice in writing (or orally, where it is not practicable to give notice in writing) to each person specified in paragraph 5 of –

- (a) the date and time of the hearing,
- (b) the place at which the hearing is to be held, and
- (c) the purpose of the hearing.

5. The persons referred to in paragraph 4 are –

- (a) in the case of a child who has not reached the age of 16 years, the Committee,
- (b) in the case of a child referred by MASH to the Court

under section 54(2) of the Law, any placement agency involved in the placement of the child, and

- (c) any other person that MASH or the Court thinks fit.

Documents to be provided for Court.

6. Subject to paragraph 14, so far as practicable, MASH must, at least seven days before the date of any hearing before the Court of any matter or case that MASH refers to the Court, send to –

- (a) the Court,
- (b) the parties to the proceedings, and
- (c) any child's representative in respect of the proceedings,

the documents, or copies of the documents, specified in paragraph 7 that are relevant to the hearing.

7. The documents referred to in paragraph 6 are –

- (a) the record of the referral meeting prepared under paragraph 12,
- (b) the statement of any condition for referral of the matter to the Court and facts in support,
- (c) where any matter has been referred for determination by the Court, notice of the Court's decision,

- (d) any application for review of a care requirement,
- (e) any report prepared by the child's representative in respect of the proceedings,
- (f) any chronology of events provided by MASH,
- (g) any child's plan (within the meaning of section 19(1)(b) of the Law),
- (h) any record of a decision of MASH to refer the case of the child to the Court under section 54(2) of the Law,
- (i) any prior or current care requirement,
- (j) any statement or other information contained in a document received from, or on behalf of, the child, and
- (k) any other document that MASH considers would assist the Court in its determination of the matter.

Special provisions relating to notice for children.

8. Subject to paragraph 9, MASH must ensure that any child who is to be given (by MASH) information or notice of any referral meeting or any hearing before the Court under paragraph 3 or 4, is given such notice in a manner appropriate to the child's age and understanding.

9. MASH is not obliged to give the child any information or notice under paragraph 3 or 4 where MASH is satisfied that the child would not be capable of understanding the information or (as the case may be) notice.

10. Where it is not practicable for MASH to inform or give notice to any person or provide documents to any person at least seven days before any meeting or hearing in accordance with paragraph 3, 4 or 6, MASH must inform, give notice or provide documents as soon as reasonably practicable before the meeting or (as the case may be) hearing.

Power to amend conditions of referral, etc.

Power to withdraw or amend statement of conditions, etc.

11. MASH may at any time withdraw or amend any statement of –

- (a) the condition for referral of a matter to the Court, or
- (b) the facts in support of the condition,

that MASH has prepared for the purposes of any matter referred to the Court under section 17(1) of the Law.

Powers and duties following referral meeting

Duty to keep records of referral meetings.

12. At the conclusion of any referral meeting, MASH must prepare a record of the meeting which records –

- (a) in the case of a matter referred by MASH to the Court under section 17(1) of the Law –
 - (i) any condition for referral, and facts in support, which are agreed by the prescribed persons,
 - (ii) any condition for referral, and facts in support, which are not agreed by the prescribed

persons, and

- (iii) the identity of those prescribed persons who agree, and those who do not agree, and

(b) in all cases –

- (i) any issue that MASH considers should be referred to the Court for consideration and determination, and
- (ii) any information that MASH, any party to the proceedings or any legal representative attending the meeting believes will assist the Court in any hearing relating to the child to whom the meeting relates.

Notice to Court.

13. Where following a referral meeting, MASH wishes to refer any additional matters for determination by the Court under section 17(3) of the Law, MASH must amend its notice of referral (and application) to the Court under section 17(1) of the Law as soon as reasonably practicable and in any case prior to the first occasion on which the Court proposes to sit to consider the matter referred under section 17(1) of the Law.

Miscellaneous powers

Power to withhold information.

14. Where, in carrying out its functions under the Law, the Ordinance or these Regulations, MASH –

- (a) considers that the disclosure of the whereabouts of

any person may place that person at risk of serious harm (whether or not physical harm), or

- (b) is aware that the Court has ordered that any place where a child is to reside must not be disclosed to –
 - (i) a person specified in the order, or
 - (ii) any class of persons specified in the order,

MASH may withhold any information it considers necessary to prevent such disclosure.

15. Where, in carrying out its functions under the Law, the Ordinance or these Regulations, MASH considers –

- (a) in the case of a child –
 - (i) it is in the best interests of the child, or
 - (ii) it is appropriate given the child's age and understanding, or
- (b) in the case of any other person concerned in any proceedings relating to the child –
 - (i) it is in the best interests of the child, or
 - (ii) it is necessary in order to protect the person against the risk of serious harm (whether or not physical harm),

that any information contained within a document should be withheld from the child or any other person, MASH may withhold that information from that child or other person.

Power to issue rules of procedure and guidance and prescribe forms.

16. MASH may –
- (a) issue rules of procedure governing the manner in which a referral meeting is to be conducted,
 - (b) issue written guidance relating to the carrying out of its functions, and
 - (c) prescribe forms for use in connection with –
 - (i) any referral meeting, and
 - (ii) any hearing before the Court.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations prescribe functions to be performed by the Multi-Agency Safeguarding Hub ("MASH") following notifications or referrals made to it under the Child Protection (Sark) Law, 2020 ("the Law") or the Child Protection (Sark) Ordinance, 2021 ("the Ordinance"). These include the duty to inquire, investigate keep records and notify other persons. These Regulations also authorise MASH to require reports from Sark public authorities.

In addition, these Regulations prescribe who can attend mandatory meetings convened by MASH for the purposes of a referral under section 17 of the Law or meetings that may be convened by MASH for referral of a child to the Court for placement out of jurisdiction or for the review of a care placement. These Regulations prescribe persons who may refuse to accept conditions for referral to the Court for the purposes of section 17(3) of the Law. These Regulations also prescribe the issues to be considered and procedures to be followed at these meetings.

Finally, these Regulations prescribe other additional functions of MASH.

These Regulations come into force on the 10th September, 2021.

