

STATES OF JERSEY



DRAFT CAPACITY AND SELF- DETERMINATION (JERSEY) LAW 2016 (APPOINTED DAY) ACT 201-

**Lodged au Greffe on 13th March 2018
by the Minister for Health and Social Services**

STATES GREFFE



Jersey

DRAFT CAPACITY AND SELF-DETERMINATION (JERSEY) LAW 2016 (APPOINTED DAY) ACT 201-

REPORT

The purpose of this Act is to bring into force all the provisions of the Capacity and Self-Determination (Jersey) Law 2016 (the “2016 Law”), except for the offence created by Article 67(1)(a) of that Law, which is to come into force following the enactment of Regulations under Article 2 of the Regulation of Care (Jersey) Law 2014 (the “2014 Law”) describing “regulated activities” for the purposes of that Law. *Article 1* sets 1st October 2018 as the day on which the 2016 Law will be brought into force, but notes that the provisions of Article 67(1)(a) and (2) shall not take effect until the necessary Regulations are made under the 2014 Law.

The 2016 Law would create a scheme of legal principles and safeguards relating to decisions made by and on behalf of persons who lack capacity (whether permanently or temporarily) to make such decisions themselves. It would introduce for the first time in Jersey new protections (such as the provisions concerning lasting powers of attorney), all of which are designed to ensure that people are enabled, so far and for as long as possible, to determine that their care and treatment are carried out in accordance with their own wishes. The 2016 Law will also repeal legislative provisions relating to the customary law system of curatorship, and replace that system by the appointment of delegates in particular circumstances.

It is intended that a number of Regulations will, if approved by the States, be made immediately following the commencement of the 2016 Law. These Regulations will make further provision around assessments of significant restrictions on the liberty of people who lack capacity, independent capacity advocates, the supervision of delegates and attorneys and transitional and consequential matters for the implementation of the 2016 Law, including the transition of curators to the court appointed delegate system.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for Health and Social Services, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

The cost to Health and Social Services for implementing the 2016 Law has been included in the overall funding within HSSD P82 and through the 2016–2019 MTFP. The indicative requirements to maintain the 2016 Law from 2020 and beyond have been identified by HSSD, and are included as indicative requirements for growth funding within the next MTFP process. There are no additional financial or staffing implications for the States arising from the adoption of this draft Act.

Explanatory Note

This Act would appoint 1st October 2018 as the day on which the Capacity and Self-Determination (Jersey) Law 2016 comes into force, except for the offence created by Article 67(1)(a) of that Law, which is to come into force following the commencement of Regulations under Article 2 of the Regulation of Care (Jersey) Law 2014 describing “regulated activities” for the purposes of that Law.



Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 73 of the Capacity and Self-Determination (Jersey) Law 2016¹, have made the following Act –

1 Commencement of Law

- (1) Subject to paragraph (2), the Capacity and Self-Determination (Jersey) Law 2016² shall come into force on 1st October 2018.
- (2) The provisions of Article 67(1)(a) and (2) of the Capacity and Self-Determination (Jersey) Law 2016³ shall come into force immediately after the commencement of the first Regulations to be made under Article 2 of the Regulation of Care (Jersey) Law 2014⁴ describing activities which are “regulated activities” for the purposes of that Law.

2 Citation

This Act may be cited as the Capacity and Self-Determination (Jersey) Law 2016 (Appointed Day) Act 201-.

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- ¹ *L.30/2016*
² *L.30/2016*
³ *L.30/2016*
⁴ *chapter 20.820*