

STATES OF JERSEY



DRAFT MENTAL HEALTH (GUARDIANSHIP) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 27th February 2018
by the Minister for Health and Social Services

STATES GREFFE



Jersey

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REPORT

Background

The [Mental Health \(Jersey\) Law 2016](#) (the “2016 Law”), to be commenced later this year, represents a major reform of mental health provision in Jersey (the background to the Law, and its scope and effect, can be understood by reference to the *Projet* which lodged the draft Law in 2016, [P.78/2016](#)). Part 4 of the 2016 Law makes provision relating to applications for, and the receipt of, mentally disordered patients into guardianship. Those provisions replace and enhance existing provision in the [Mental Health \(Jersey\) Law 1969](#) (to be repealed by the 2016 Law), but the concept of guardianship remains the same: it provides a mechanism that, when compulsory powers have to be used, enables the option of providing care and treatment in the least restrictive setting, consistent with the patient’s best interests and safety, whilst balanced with the need to ensure public safety. The appointment of a guardian for a patient will enable their welfare to be safeguarded while they continue to live in the community, facilitating the maintenance of packages of care and support that aim to meet the needs of the patient outside of the hospital setting.

The Regulations

The Regulations provide for general duties of private guardians, for procedural requirements for the transfer of patients into guardianship from approved establishments, and *vice versa*, and where the substitution of a private guardian is necessary.

Mind Jersey provided input on a range of issues pertaining to guardianship, and others, during the consultation phase of the development of the 2016 Law. Those matters were addressed in finalising and bringing forward the 2016 Law. The proposed Regulations look to deal with procedural matters under Regulation-making powers set out in the 2016 Law for which it was considered further consultation was not necessary.

General duties of private guardians

The Regulations impose duties on private guardians around the proper and timely provision of information to the Minister relevant to guardianship function, and as to compliance with orders and directions made by the Minister in this regard. For example, on the reception of a patient into guardianship, the Minister must be notified of the private guardian’s address and the address of the patient; changes to such arrangements must also be notified to the Minister. Imposing duties of this nature on private guardians, particularly around the provision of information relating to

guardianship arrangements, will ensure the maintenance of comprehensive Ministerial oversight for the provision of guardianship, as well as ensuring the detail of arrangements made for patients in the community, such as living arrangements and care plans, are recorded. The overriding objective of these duties and information requirements is for enhancing patient care and safety.

Transfer of patients between guardians, and transfer of patients between approved establishment and guardianship (and vice versa)

The Regulations set out procedural requirements, and duties for those involved with, the following –

- (a) the transfer of patients between guardianship;
- (b) the transfer of a patient from an approved establishment into guardianship; and
- (c) the transfer of a patient from guardianship to an approved establishment.

Provision for processes around the transfer of patients subject to guardianship acknowledges that the circumstances of guardians and patients, not least the care needs of such patients, may change over time. The circumstances of guardians may change: for example, a private guardian may become ill or otherwise incapable of performing the guardian function. The circumstances of patients may change: for example, a patient who is assessed as being suitable to receive care in a community setting may, for a number of reasons, need to be brought back within a hospital environment, where such a change in setting is in the best interests of the patient, or those with whom the patient resides, or the Public at large. Equally, a patient whose condition would benefit from care in the community should be permitted to move out of a hospital or other ‘establishment’ and into a community setting, subject to an assessment of all relevant risks and circumstances.

The Regulations make provision for facilitating the transfer of patients in the scenarios described above. The Regulations impose obligations and duties on those overseeing the transfer; for example, placing notification obligations on the guardians responsible for transferring, and receiving, a patient. Where the care setting of a patient is proposed to be changed, for example by moving the patient from a hospital into guardianship, the Regulations make provision for the application process to be followed to bring about that transfer, including the requirement for an assessment of the patient by a registered medical practitioner as to whether the transfer of the patient is warranted and in the best interests of that patient. The Regulations require notice of such arrangements to be provided to the Minister, and any transfer of a patient are subject to the authorization of the Minister.

The Regulations also provide for offences and penalties where a private guardian contravenes duties imposed under the Regulations, and also where information relating to the patient is wrongfully disclosed, or false or misleading statements are made in connection with applications made under the Regulations; for example, for the transfer of a patient, or under the 2016 Law, such as a guardianship application in respect of a patient.

Financial and manpower implications

The cost to Health and Social Services for implementing these Regulations has been included in the overall funding within HSSD P82 and through the 2016–2019 MTFP, which covers the implementation of the new Mental Health (Jersey) Law 2016. 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 these draft Regulations.

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).

Explanatory Note

These Regulations would make further provision supplementing Part 4 of the Mental Health (Jersey) Law 2016 (the “Law”) which deals with guardianship.

Regulation 2 would specify the general duties of a private guardian (defined, by the interpretation provision in *Regulation 1*, as a person, other than the Minister, who is named as a guardian under Part 4 of the Law), to comply with Orders or directions by the Minister, to notify the Minister of various matters, and to maintain a care plan. *Regulation 3* would make provision as to the arrangements for transfer of a patient between guardians, both where it appears to the Minister that a guardian has for a specified reason become unfit to act as such, and where the guardian considers himself or herself unfit. Provision would also be made in respect of the criteria for, and manner of, transfer of a patient into guardianship from an approved establishment as defined by the Law (*Regulation 4*) and into an approved establishment from guardianship (*Regulation 5*). *Regulation 6* would set out requirements for records to be kept by the Minister in relation to matters of guardianship. *Regulation 7* would create offences: the offence of failing to furnish the Minister with a report when required under *Regulation 2* is punishable by a fine of level 3 on the standard scale; the offence of failure to comply with directions by the Minister is punishable by a fine of level 2 on the standard scale; the offences of wrongful disclosure of information, and of providing false information, are punishable by a fine of level 3. (Under the standard scale of fines for which provision is made by the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, the maximum fine at level 2 is £1,000 and the maximum fine at level 3 is £10,000.)

Regulation 8 would give the title by which these Regulations may be cited and provides for them to come into force immediately following the commencement of Part 4 of the Law.



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Arrangement

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Jersey

DRAFT MENTAL HEALTH (GUARDIANSHIP) (JERSEY) REGULATIONS 201-

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

THE STATES, in pursuance of Articles 30, 32 and 94 of the Mental Health (Jersey) Law 2016¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“Law” means the Mental Health (Jersey) Law 2016²;

“private guardian” means, in relation to a patient, a person (other than the Minister) who is named as a guardian under Part 4 of the Law.

2 General duties of private guardians

- (1) In exercising powers conferred or duties imposed on a private guardian by the Law or these Regulations, the private guardian must comply with such Orders as may be made or such directions as may be given by the Minister.
- (2) A private guardian must furnish the Minister with all such reports or other information with regard to the patient as the Minister may from time to time require.
- (3) On reception of the patient into his or her guardianship (other than as a result of a transfer under Regulation 3 or 4 or Article 32 of the Law), a private guardian must notify the Minister of the private guardian’s address and the address of the patient.
- (4) On any permanent change of either address mentioned in paragraph (3) a private guardian must notify the Minister of the new address, either before or no later than 7 days after the change.
- (5) A private guardian must notify the Minister of the name and address of the patient’s responsible medical officer and general practitioner.
- (6) On any change of the patient’s responsible medical officer or general practitioner, a private guardian must notify the Minister of the name and address of the new responsible medical officer or general practitioner.

- (7) A private guardian must notify the Minister, as soon as reasonably practicable, of the death of the patient.
- (8) A private guardian must maintain a care plan with regard to the patient, in accordance with any requirements specified as to such plans in a code of practice issued by the Minister.
- (9) Any notification required to be given under this Regulation must be given in writing.

3 Duties arising upon, and arrangements for, transfer of patient between guardians

- (1) Paragraph (2) applies where it appears to the Minister that a private guardian –
 - (a) has performed his or her function negligently or in a manner contrary to the interests of the patient;
 - (b) is incapacitated by illness or any other cause from acting as guardian in relation to the patient; or
 - (c) is otherwise no longer a fit and proper person so to act.
- (2) Where this paragraph applies, the Minister must notify the private guardian (“G1”) in writing –
 - (a) that the patient is to be transferred, within a specified period, out of the guardianship of G1 under Article 32(2) of the Law; and
 - (b) of the reasons why it appears to the Minister that such a transfer should be made.
- (3) Where a private guardian considers himself or herself to be unfit or unable to act as such by reason of illness or any other cause, the private guardian must notify the Minister, in writing or in such form as may be prescribed, of that fact and of his or her consent to the transfer of the patient out of his or her guardianship into the guardianship of such other person and under such arrangements as the Minister may see fit to make under Article 32 of the Law.
- (4) The Minister must notify in writing any private guardian into whose guardianship a patient is to be transferred (“G2”) under Article 32(2) of the Law, of the arrangements made for the proposed transfer.
- (5) Where the arrangements made for the proposed transfer of a patient under Article 32(2) of the Law name a person other than the Minister as guardian, the transfer shall not take place unless the Minister receives from G2 his or her consent, in such form as may be prescribed, to act as guardian in relation to the patient.
- (6) Upon receipt of notification under paragraph (3) or of G2’s consent under paragraph (5), and having notified the patient’s responsible medical officer in writing of the arrangements made for the transfer, the Minister must authorize the transfer and specify the period within which the transfer is to take place.
- (7) Where the Minister authorizes a transfer under this Regulation, the Minister must give notice of the authorization –

- (a) to the patient's responsible medical officer, before the transfer takes place; and
 - (b) in writing to the patient's nearest person, either before the transfer takes place or as soon as reasonably practicable thereafter.
- (8) Authorization under this Regulation shall be sufficient authority for the Minister, G2 or a person authorized for the purpose by the Minister to take the patient and convey him or her, within the period of 14 days beginning with the date of the authorization, to such place as may be specified for his or her reception into the guardianship of G2.

4 Transfer of patient into guardianship from approved establishment

- (1) An application for the transfer into guardianship of a person who is liable to be detained in an approved establishment must be made in writing by an authorized officer to the Minister and in accordance with this Regulation.
- (2) The provisions of Article 29 of the Law shall apply in relation to an application under paragraph (1) as though such an application were an application under that Article for reception of a patient into guardianship, except that paragraphs (2)(b) and (3) to (5) of that Article shall not apply, but instead of those provisions –
- (a) the application must contain a statement that in the opinion of a registered medical practitioner who is an approved practitioner, the grounds stated in paragraph (3) are met; and
 - (b) the application must include, or be accompanied by, the recommendation of the approved practitioner (the “medical recommendation”) as to which Article 19 of the Law shall apply as if the application were an application under Part 3.
- (3) The grounds mentioned in paragraph (2)(a) are that –
- (a) the patient appears to be suffering from mental disorder of a nature or degree which warrants the reception of the patient into guardianship; and
 - (b) it is necessary in the interests of the patient's welfare for the patient to be transferred from the approved establishment in which he or she is detained, and received into guardianship.
- (4) Where the Minister agrees to the transfer the Minister must authorize the transfer and specify the period within which the transfer must take place, and –
- (a) authorization under this Regulation shall be sufficient authority for the managers of the approved establishment, or a person authorized for the purpose by the managers, to take the patient and convey him or her, within the period of 14 days beginning with the date on which the approved practitioner last examined the patient, to such place as may be specified for his or her reception into guardianship; and

- (b) Article 30(1) to (4) of the Law shall apply in relation to such an authorization as those provisions apply in relation to a guardianship authorization under that Article.
- (5) Where the Minister authorizes a transfer under this Regulation, the Minister must give notice in writing of the authorization to –
 - (a) the managers of the approved establishment from which the patient is to be transferred;
 - (b) the patient’s nearest person; and
 - (c) (in the case of a private guardian) the guardian.
- (6) Where a form of application under this Regulation is prescribed, an application must be made using that form.

5 Transfer of patient into approved establishment from guardianship

- (1) An application for the transfer into an approved establishment of a patient who has been received into guardianship must be made in writing to the Minister and in accordance with this Regulation.
- (2) All such applications must –
 - (a) be made by an authorized officer –
 - (i) who has personally seen the patient within the period of 7 days ending with the date of the application, and
 - (ii) following consultation with the patient’s nearest person (unless such consultation is not reasonably practicable or would involve unreasonable delay) and responsible medical officer;
 - and
 - (b) contain a statement that, in the opinion of the authorized officer, the grounds stated in paragraph (3) are met.
- (3) The grounds mentioned in paragraph (2)(b) are that the existing arrangements made for the patient under guardianship do not provide, or have ceased to provide, an environment that is –
 - (a) conducive to the further assessment or treatment of the patient for the purposes of preventing a deterioration in the patient’s mental illness and condition; or
 - (b) appropriate, having regard to the need for protection of other persons.
- (4) The Minister must not authorize the transfer of a patient into an approved establishment unless the Minister is satisfied that the managers of the approved establishment –
 - (a) consent to the transfer; and
 - (b) have made arrangements sufficient to enable the admission of the patient to the approved establishment within the period of 14 days beginning with the date on which the patient was last seen by the authorized officer.
- (5) Authorization under this Regulation shall be sufficient authority for –

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- (a) the Minister or a person authorized for the purpose by the Minister to take the patient and convey him or her, within the period of 14 days beginning with the date of the authorization, to the approved establishment; and
 - (b) the admission and detention of the patient in the approved establishment (and such detention shall be regarded, for the purposes of the application of Articles 23 to 28 and 50 of the Law and of Regulation 4, as detention pursuant to a treatment authorization under Article 22 of the Law).
- (6) Where a form of application under this Regulation is prescribed, an application must be made using that form.

6 Confidentiality of records to be kept by Minister

The Minister must keep copies of all applications made, notifications given, and reports or other information furnished or provided to him or her under these Regulations or Part 4 of the Law, in such a manner as to ensure the confidentiality of the contents of such applications, notifications, reports or other information.

7 Offences and penalties

- (1) A private guardian who fails without reasonable excuse to furnish the Minister with any report or other information as required by the Minister under Regulation 2 is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (2) A private guardian who fails without reasonable excuse to comply with directions given by the Minister under these Regulations is guilty of an offence and liable to a fine of level 2 on the standard scale.
- (3) A private guardian who knowingly or recklessly discloses any information relating to the patient, the patient's care or treatment, or the patient's guardian or guardianship, or any other similar matter arising in relation to guardianship under these Regulations or under the Law, otherwise than in accordance with or for the purposes of the Regulations or the Law, is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (4) A private guardian who provides, in connection with an application to be made under these Regulations or under Part 4 of the Law, any information which the person knows to be false or intends to be misleading is guilty of an offence and liable to a fine of level 3 on the standard scale.

8 Citation and commencement

These Regulations may be cited as the Mental Health (Guardianship) (Jersey) Regulations 201- and shall come into force immediately following the commencement of Part 4 of the Law.

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- ¹ *L.29/2016*
² *L.29/2016*