
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – MINISTER FOR HEALTH AND SOCIAL SERVICES – DECEMBER 2018 – MENTAL HEALTH (JERSEY) LAW 2016

**Presented to the States on 10th December 2018
by the Minister for Health and Social Services**

STATES GREFFE

REPORT

On 30th November 2018, the Minister for Health and Social Services made a Ministerial Decision delegating certain of his functions under Articles 28, 30 and 30A of the [States of Jersey Law 2005](#) (see Decision reference MD-HSS-2018-0058, available at www.gov.je).

Article 28 of the States of Jersey Law 2005 permits a Minister to delegate, wholly or partly, functions to an Assistant Minister or an officer.

The Law states, *inter alia* –

“28 Power of Minister to delegate functions

- (1) A Minister may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey, to –
 - (a) one of his or her Assistant Ministers;
 - (b) an officer.
- (1A) A Minister shall not delegate to an Assistant Minister any function the delegation of which is wholly prohibited by an enactment.
- (1B) Where a Minister delegates to an Assistant Minister a power to make an enactment, paragraphs (4) and (5) of Article 26 shall apply to the making of an enactment by the Assistant Minister, in exercise of the delegated power, as they would apply to the making of the enactment by the Minister.
- (2) A Minister shall not delegate to an officer –
 - (a) any power to make an enactment;
 - (b) any power to decide an appeal under an enactment;
 - (c) any function the delegation of which is prohibited wholly, or to an officer, by an enactment.
- (3) The delegation of functions by a Minister under this Article shall not prevent the Minister exercising those functions personally.
- (4) Where any licence, permit or authorization is granted in purported exercise of functions delegated under paragraph (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the functions had not been delegated, or that any requirement attached to the delegation of the functions had not been complied with.
- (5) In this Article –

“Minister” includes the Chief Minister;

“officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005 and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1(1) of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993.

- (6) The States may by Regulations amend the definition “officer” in paragraph (5).”

“30 Ministerial delegations to be presented to States

- (1) A Minister who delegates functions under Article 28 shall present to the States a report specifying the functions delegated and to whom.
- (2) A Minister shall not be required to present a report under paragraph (1) where the delegation is so immediate and of such brief duration that it is not practicable to present the report before the delegation ends.

30A List of delegations to be published

- (1) The Chief Minister shall cause to be established, maintained and published a consolidated list of –
- (a) the functions for the time being discharged by the Chief Minister and by each Minister;
- (b) the functions for the time being delegated by the Chief Minister and each Minister under Article 28, and to whom.
- (2) The list shall also specify which Minister is discharging, for the time being, the functions of another Minister under Article 27(1) or (2).
- (3) The information described in paragraph (1)(b) or (2) is not required to be incorporated in the list where the period for which the delegation has effect or for which one Minister’s functions are being discharged by another is so immediate and of such brief duration that it is not practicable to amend and publish the list to incorporate the information before the end of the period.
- (4) It shall be sufficient if the list is published on a website.”

The terms of the delegations, and the legislation under which those delegations were made, were recorded in a Report attached to the Ministerial Decision, as shown below –

The following functions of the [Mental Health \(Jersey\) Law 2016](#) (“the Law”) are delegated by the Minister for Health and Social Services under the relevant Articles of the Law (as listed below), to the Mental Health Law Administrator (or their Deputy), Health and Community Services Department. All decisions made by the Officer delegated will be recorded and, where appropriate, included in the annual report to the Minister.

Article of the Law:	Scope of delegation:
<i>Article 6 – Authorized Officers</i>	6(1) – to authorize officers in accordance with Article 6(1) of the Law and Article 2 of the Mental Health (Miscellaneous Provisions and Prescribed Forms) (Jersey) Order 2018 .
<i>Article 10 – Nomination of nearest person</i>	10(1)(b) – to receive nominations of nearest person on behalf of the Minister. 10(2) – to nominate a person as the patient’s nearest person on behalf of the Minister.

Article of the Law:	Scope of delegation:
PART 3 – APPROVED ESTABLISHMENTS: ADMISSIONS FOR ASSESSMENT, TREATMENT, ETC.	To receive authorizations and recommendations on behalf of the Minister from authorized officers, approved practitioners and/or registered medical practitioners.
Article 16 – Approved practitioners	To approve practitioners in accordance with Article 16 of the Law and Article 3 of the Mental Health (Miscellaneous Provisions and Prescribed Forms) (Jersey) Order 2018 .
Article 20 – Effect of admission application	To receive from the Manager (“M”) written notification of the admission of a patient to whom the application relates. The Mental Health Law Administrator will confirm in writing to M that the admission application has been duly made
Article 22 – Treatment authorization	22(4) – on behalf of the Minister, to receive a report from the Responsible Medical Officer (“RMO”) recommending whether or not treatment should be renewed; 22(5)(a) – to inform the patient and the patient’s nearest person of the recommendations and proposed action from the RMO report.
Article 24 – Leave of absence from approved establishment	22(4) – on behalf of the Minister, to receive notice from the RMO of the granting of a leave of absence.
Article 26 – Transfer of patients	26(1) – to arrange for the transfer of a patient who is liable to be detained, from one approved establishment to another.
Article 27 – Discharge of patients	27(4)(c) – on behalf of the Minister, to receive notice in writing from the RMO regarding the discharge of a patient who was liable to be detained.
Article 28 – Special provisions: patient absent without leave	28(5)(b) & (6) – on behalf of the Minister, to receive a report in writing from the RMO regarding the necessity to detain a patient for treatment in an approved establishment; or to arrange guardianship for the patient in the interests of their health and/or safety; or for the protection of other persons.
PART 4 – GUARDIANSHIP	To receive authorizations and recommendations on behalf of the Minister from authorized officers, approved practitioners, and/or registered medical practitioners.

Article of the Law:	Scope of delegation:
<i>Article 33 – Duration of guardianship</i>	33(4)&(5) – to receive the report from the RMO on behalf of the Minister, and to inform the patient and nearest person of the RMO’s recommendations and the actions to be taken.
<i>Article 38 – Interpretation and application of Part 6</i>	38(3)(c) – to approve a “second opinion approved doctor” on behalf of the Minister.
<i>Article 78 – Information to be given to patients</i>	78(1) – when appropriate, as soon as possible after the detention or guardianship commences, on behalf of the Minister to take all such steps as are reasonable to ensure that the patient understands their rights as described in this Article; 78(2) – when appropriate, on behalf of the Minister to take all such steps as are practicable to provide the patient’s nearest person with the same information regarding the patient’s rights as described in paragraph (1) of this Article.