

STATES OF JERSEY



DRAFT MENTAL HEALTH (AMENDMENT No. 3) (JERSEY) LAW 201-

**Lodged au Greffe on 6th May 2010
by the Minister for Health and Social Services**

STATES GREFFE



Jersey

DRAFT MENTAL HEALTH (AMENDMENT No. 3) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Health and Social Services has made the following statement –

In the view of the Minister for Health and Social Services the provisions of the Draft Mental Health (Amendment No. 3) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Deputy A.E. Pryke of Trinity**

REPORT

Introduction

Further amendments to the *Mental Health (Jersey) Law 1969* are necessary to remedy interference with the rights of individuals, which are defined under the European Convention on Human Rights, as well as updating some procedural and operational matters for the sake of law revision.

Informal discussions have been taking place on the subject of a new Mental Health Law for Jersey, to replace the existing 1969 Law, as well as the introduction of new legislation to provide for mentally disordered offenders and also for adults with incapacity. These matters are now in the process of being formalised in order that detailed consideration and consultation on them can begin during 2010.

As the introduction of a new replacement Mental Health Law is likely to follow after the introduction of the 2 new separate pieces of legislation mentioned above, its introduction is considered to be several years away. It is therefore necessary to update the existing legislation with the additional human rights provisions by amendment, to cover the intervening period.

This report has been prepared following consultation with senior mental health service staff involved in the operation of the 1969 Law, the Law Officers' Department, the Viscount's Department, Jersey Focus on Mental Health; as well as the Bailiff and the Chairman and Vice-Chairman of the Mental Health Review Tribunal on those changes which will specifically affect the operation of the Tribunal.

The changes currently being proposed are summarised below and have been subject to detailed legal advice from the Law Officers' Department and a comprehensive human rights audit.

The Minister for Health and Social Services has signed a statement to the effect that, in accordance with the provisions of Article 16 of the *Human Rights (Jersey) Law 2000*, the provisions of the *projet de loi* to be lodged au Greffe are compatible with the Convention rights.

Effects of the Law amendments

1. Redefine a child as a person under the age of 18 years. Previously a child was defined in the law as below 16 years. The amendment brings the Law in line with the United Nations Convention for the Rights of the Child.
2. In relation to applications for detention in hospital, amendments to the wording have been made for clarity.
3. Two new appeal provisions for discharge to the independent Mental Health Review Tribunal have been introduced for patients who are liable to detention in a hospital under existing 28 day or one year detention orders.
4. With respect to Guardianship, 2 new provisions have been added. The first clarifies the powers of a Guardian, as well as being more specific on the residential requirements and conveyance powers in respect of a

person made subject to Guardianship. The second provides a new appeal provision for discharge from guardianship for such persons.

5. A new appeal provision has been introduced for a person subject to Guardianship who, it is recommended, should be transferred to a hospital for treatment.
6. The existing power of the Minister to discharge a patient from detention in a hospital or subject to Guardianship has been removed. The Minister's present discharge powers are being transferred to the independent Mental Health Review Tribunal.
7. For clarity, the powers of the responsible medical officer (i.e. a Consultant Psychiatrist) to discharge a patient from hospital have been made more specific.
8. The amendment now makes clear that the Viscount, Deputy Viscount or any sworn officer of that Department may be appointed as a Curator by the Royal Court.
9. The maximum number of Medical and Lay members that may be appointed to the respective Tribunal panels of such members has been increased from 5 to 8, so as to assist availability if it proves to be necessary to do so.
10. A new provision has been introduced requiring Tribunal members to retire upon reaching the age of 72 years, the same as for Jurats. Also provisions have been made more specific in relation to the actual time when a member's term of office will expire.
11. Further clarifications as to the role of a Deputy Chairman of the Tribunal have been made.
12. A patient will now be able to make a second application for discharge to the Tribunal, if a previous application in respect of the patient has been withdrawn, so long as the new application is made within the time limits prescribed in the Law.

Financial and manpower implications

This is dependent on the increased number of applications considered by the Tribunal. An additional cost of £1,500 per annum is considered appropriate.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 14th April 2010 the Minister for Health and Social Services made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Health and Social Services the provisions of the Draft Mental Health (Amendment No. 3) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Mental Health (Jersey) Law 1969 (referred to as “the Law” by virtue of *Article 1*).

Article 2 makes an amendment that has the effect of defining a child for the purposes of the Law as a person under 18 years of age (instead of the present 16 years).

Articles 3, 4 and 5 make amendments relating to, among other matters, applications for review by the Mental Health Review Tribunal.

Article 3 makes it possible to seek review of an *admission for observation*, if applied for within 14 days after the admission. *Article 3* also extends from 6 months to 12 months the period in which an application may be made for review of an *admission for treatment*, as well as making changes for the sake of law revision.

Article 4 makes it clear that a guardian (and certain authorized persons) may convey a person subject to guardianship to the place where the person is to reside or required to attend. *Article 4* also extends from 6 months to 12 months the period in which an application may be made for review of *guardianship* under the Law.

Article 5 allows applications to be made at any time for review of *transfers from guardianship to a hospital*.

Article 6, in the case of a patient detained for observation, admitted for treatment, or subject to guardianship, removes the power of the Minister to discharge the patient, leaving it to the responsible medical officer or the patient’s nearest relative to do so.

Article 7 makes it clear that the Viscount may be appointed as curator to manage the affairs of a person who is in hospital or under guardianship under the Law.

Article 8 –

- (a) provides for up to 8 doctors and 8 lay members (instead of the current 5) to be appointed to the panels from which (with the addition of the chairman) the Tribunal can be constituted;
- (b) requires members of the Tribunal to retire from the Tribunal at the end of the year in which they reach 72 years of age; and
- (c) enables fresh application to be made to the Tribunal for review when a previous application for review has been withdrawn, as long as the fresh application is still within time.

Article 9 sets out the name of the amendment Law and provides for its coming into force.



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Arrangement

Article

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Jersey

DRAFT MENTAL HEALTH (AMENDMENT No. 3) (JERSEY) LAW 201-

A LAW to amend further the Mental Health (Jersey) Law 1969.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Mental Health (Jersey) Law 1969¹.

2 Article 1 amended

In Article 1(1) of the principal Law for the definition of “child” there shall be substituted the following definition –

“ ‘child’ means a person who has not attained the age of majority;”.

3 Article 12 amended

In Article 12 of the principal Law –

- (a) in paragraph (2) for the words “the application was approved under the provisions of paragraph (1).” there shall be substituted the words “the application was made.”;
- (b) in paragraph (3) for the words “the application under the provisions of paragraph (1)” there shall be substituted the words “the application for admission”;

- (c) for paragraphs (5) and (6) there shall be substituted the following paragraphs –

“(5) A patient who is for the time being liable to be detained under Article 6 or 7 shall cease to be so liable if the Tribunal, on application by the patient, directs the discharge of the patient.

(6) A patient who is admitted to a hospital in pursuance of an application for admission for observation may apply to the Tribunal within the period of 14 days beginning with the day on which the patient is so admitted, for a direction under paragraph (5).

(7) A patient who is admitted to a hospital in pursuance of an application for admission for treatment may apply to the Tribunal, within the period of 12 months beginning with the day on which the patient is so admitted, for a direction under paragraph (5).

(8) Where a patient is admitted to a hospital in pursuance of an application for admission for observation or treatment, any previous application under this Part by virtue of which the patient was liable to be detained in a hospital or subject to guardianship shall cease to have effect.”.

4 Article 16 amended

In Article 16 of the principal Law –

- (a) after paragraph (1) the following paragraphs shall be inserted –

“(1A) A guardianship application so approved shall, subject to the provisions of any Order made under Article 52, in general confer on the person named in the application as guardian (whether that person is the Minister or another person), to the exclusion of any other person –

- (a) the power to require the patient to reside at a place specified by the person named as guardian or by an officer;
- (b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training; and
- (c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, officer or other person so specified.

(1B) Where a patient who is for the time being subject to guardianship under this Law absents himself or herself without the leave of his or her guardian from the place at which the patient is required by the guardian to reside or to attend (or in fact is not yet at that place), the patient may be taken into custody and returned (or taken) to that place by the guardian, an officer, or by any person authorized in writing by the guardian.”;

- (b) for paragraph (5) there shall be substituted the following paragraph –

“(5) A patient who is received into guardianship in pursuance of a guardianship application may apply to the Tribunal, within the

period of 12 months beginning with the day on which the application is approved, for a direction that the guardianship be terminated.”.

5 Article 22 amended

For Article 22(7) of the principal Law there shall be substituted the following paragraph –

- “(7) A patient who is transferred from guardianship to a hospital by virtue of an arrangement under paragraph (3)(a), or is aware that such an arrangement for such a transfer has been made for him or her, may at any time apply to the Tribunal for a direction revoking the arrangement and –
- (a) reversing the transfer; or
 - (b) making such other arrangement as the Tribunal thinks appropriate.”.

6 Article 27 substituted

For Article 27 of the principal Law there shall be substituted the following Article –

“27 Discharge of patients

- (1) Subject to the provisions of this Article and of Article 28, a patient who is for the time being liable to be detained under this Law, or subject to guardianship under this Law, shall cease to be so liable or so subject if an order for discharge of the patient from detention or guardianship (as the case requires) is made by the responsible medical officer or by the patient’s nearest relative.
- (2) The responsible medical officer shall make an order for discharge under paragraph (1) if the responsible medical officer is satisfied –
 - (a) that the patient is no longer suffering from mental disorder or from addiction (as the case may be); or
 - (b) that, having regard to the care or supervision which would be available to the patient if he or she were discharged, it is not necessary in the interest of the patient’s health or safety, or for the protection of other persons, that the patient should continue to be liable to be detained or, as the case may be, subject to guardianship.”.

7 Article 43 amended

After Article 43(7) of the principal Law there shall be inserted the following paragraph –

- “(7A) For the avoidance of doubt it is hereby stated that the Viscount may be appointed, in his or her capacity as such, as curator under this Article.”.

8 Schedule 1 amended

In Schedule 1 to the principal Law –

- (a) in paragraph 1(b) for the words “not exceeding 5 in number” there shall be substituted the words “not exceeding 8 in number”;
- (b) in paragraph 1(c) for the words “not exceeding 5 in number” there shall be substituted the words “not exceeding 8 in number”;
- (c) in paragraph 4 for the words “shall cease to hold office –” there shall be substituted the words “shall cease to hold office as such a member on the earliest of the following occasions –”;
- (d) in paragraph 4(a) for the words “on the 31st December” there shall be substituted the words “at midnight on 31st December”;
- (e) immediately before paragraph 4(b) there shall be inserted the following sub-paragraph –
 - “(aa) at midnight on 31st December immediately following the member’s 72nd birthday.”;
- (f) in paragraph 5 for the words “if for any reason the chairman is unable to act, by the vice-chairman” there shall be substituted the words “if the chairman is not available to act, by the vice-chairman or, if neither the chairman nor the vice-chairman is available to act, the deputy chairman.”;
- (g) for paragraph 6 there shall be substituted the following paragraph –
 - “**6** Where, under any provision of this Law, an application to the Tribunal is authorized to be made by or in respect of any patient, the application shall be made by notice in writing addressed to the chairman of the Tribunal, and the relevant hearing by the Tribunal shall commence –
 - (a) as soon as practicable, in the case of an application under Article 12(6);
 - (b) in accordance with Article 35C, in the case of a review under that Article; or
 - (c) within 3 months after the application is made, in every other case.”;
- (h) for paragraph 7 there shall be substituted the following paragraph –
 - “**7**
 - (1) Except as expressly provided by this Law, no application may be made to the Tribunal by or in respect of a patient.
 - (2) Where, under any provision of this Law, an application may only be made to the Tribunal within a specified period, a person may not under that provision make more than one application in respect of the same patient within that period.
 - (3) Sub-paragraph (2) does not prevent a person from making another application under the same provision and in respect of the same patient within that period if any other application made within that period by the person under that provision and in respect of that patient has been withdrawn.”.

9 Citation and commencement

- (1) This Law may be cited as the Mental Health (Amendment No. 3) (Jersey) Law 201-.
- (2) This Law shall come into force 28 days after it is registered.

¹ *chapter 20.650*