

STATES OF JERSEY



DRAFT CAPACITY AND SELF- DETERMINATION (AMENDMENT) (JERSEY) LAW 201-

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

STATES GREFFE



Jersey

DRAFT CAPACITY AND SELF-DETERMINATION (AMENDMENT) (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 Capacity and Self-Determination (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator A.K.F. Green, M.B.E.**

Minister for Health and Social Services

Dated: 26th February 2018

REPORT

The [Capacity and Self-Determination \(Jersey\) Law 2016](#) (the “2016 Law”) was approved by the States Assembly on 14th September 2016 and is proposed to be commenced later this year, alongside the [Mental Health \(Jersey\) Law 2016](#), together with a series of secondary legislation supporting the implementation of those Laws.

The background and objectives to the 2016 Law can be understood from the Report to the proposition for that Law ([P.79/2016](#)). Part 4 of the 2016 Law provides, among other things, the power for the States to make Regulations for the supervision of court-appointed delegates and lasting powers of attorney. Delegates and attorneys will play a key role in supporting persons who lack capacity, enabling such persons to provide for a time in the future when they may lose capacity to make decisions for their own affairs. The Regulations to be made under Part 4 of the 2016 Law are the Draft Capacity and Self-Determination (Supervision of Delegates etc.) (Jersey) Regulations 201- (the “Supervision Regulations”), which have been lodged for debate alongside this and other draft legislation, making up a package of legislation for the implementation of the 2016 Law.

The Supervision Regulations will designate the Viscount with responsibility for supervision for delegates and attorneys, and will include a power for the Viscount to charge a supervision fee where the Royal Court assesses, on the appointment of a delegate for a person lacking capacity under Article 24 of the 2016 Law, that the delegate in question would benefit from supervision by the Viscount in the performance of that role (in essence, a role similar to that performed by the Public Guardian as regards court-appointed deputies under the Mental Capacity Act 2005 and its secondary legislation).

In preparing the Supervision Regulations, it was acknowledged that Part 4 of the 2016 Law did not provide sufficient *vires* for the imposition of fees by the Viscount where the Court deemed supervision to be necessary. Accordingly, the draft Law looks to amend the 2016 Law to provide the power for fees to be charged by the Viscount. The role of the Viscount, and supervision arrangements, are explained fully in the Report to the Supervision Regulations.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

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).

Human Rights

No human rights notes are annexed because the Law Officers’ Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

This Law would amend Article 36 of the Capacity and Self-Determination (Jersey) Law 2016, to confer full power on the States to make Regulations in respect of the payment and amount of fees to be charged by a person designated under paragraph (1) of that Article as having responsibility for the supervisory and regulatory matters set out in paragraph (1)(a) to (c), including the supervision of the conduct of delegates and of persons exercising authority under lasting powers of attorney.



Jersey

DRAFT CAPACITY AND SELF-DETERMINATION (AMENDMENT) (JERSEY) LAW 201-

A LAW to amend the Capacity and Self-Determination (Jersey) Law 2016

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 Capacity and Self-Determination (Jersey) Law 2016 amended

In Article 36 of the Capacity and Self-Determination (Jersey) Law 2016¹, for paragraph (2) there shall be substituted the following paragraph –

- “(2) Such Regulations may, further and in particular, make provision –
- (a) as to the payment, to the person or office designated under paragraph (1), of fees for or in relation to the matters listed in paragraph (1)(a) to (c);
 - (b) enabling the Minister by Order to prescribe the amount of such fees as mentioned in sub-paragraph (a); and
 - (c) as to the payment of fees, including the amount of such fees, in a case where a report is provided to the Court under Article 34(8)(b).”.

2 Citation and commencement

This Law may be cited as the Capacity and Self-Determination (Amendment) (Jersey) Law 201- and shall come into force immediately following the commencement of the Capacity and Self-Determination (Jersey) Law 2016.

¹ *L.30/2016*