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# **STATES OF JERSEY**



## **STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – HEALTH PROTECTION SERVICES**

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**Presented to the States on 1st December 2010  
by the Minister for Health and Social Services**

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**STATES GREFFE**

## REPORT

On 25th November 2010, the Minister for Health and Social Services made a Ministerial Decision delegating certain of her functions under Article 28 of the States of Jersey Law 2005 (MD-HSS-2010-0050, available at [www.gov.je](http://www.gov.je)).

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 –

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Under the States of Jersey Law 2005, the Minister for Health and Social Services is able to nominate States Officers to take delegated responsibility for certain roles and functions which are bestowed by Laws, as well as Regulations and Orders made under those Laws. A list of the Laws and the functions delegated in respect of Public Health legislation which are the responsibility of the Minister for Health and Social Services is attached for reference.

In terms of Public Health legislation, a principal nominated delegate for much of the legislation is the head of the Health Protection Service or his/her nominated deputy. The current post-holder will leave States employment on 26th November 2010; and therefore the matter requires to be regularised to ensure that there are no legal boundaries to the Department continuing to exercise its functions.

It is proposed that, as an interim measure, and until the role and function of the health protection function has been reviewed, the nominated delegate for these will be the Acting Medical Officer of Health for the Island.

### Financial implications

There are no financial implications for this proposal.

### Recommendation

The Minister approves the amendment to the list of delegated functions substituting the Acting Medical Officer of Health or her nominated deputy for the head of Health Protection.

The amended list of delegated functions is submitted to the States Assembly for ratification.

<b>Legislation:</b>	Food Safety (Jersey) Law 1966
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 11(1), (2), (3) – to determine whether oysters may be landed in the Island without danger to the public health; and to decide whether any oysters landed are unfit for human consumption.

<b>Scope of delegation:</b>	<p>(a) to authorize the landing of oysters, according to paragraph (1), i.e. provided that they do not constitute a danger to the public health;</p> <p>(b) to require the confiscation or destruction of oysters according to the provisions of paragraph (2);</p> <p>(c) to direct that oysters be confiscated or otherwise dealt with according to the provisions of paragraph (3).</p>
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<b>Legislation:</b>	Food Safety (Jersey) Law 1966
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	<p>Article 51 – to determine according to the Article whether –</p> <p>(a) an offence appears to have been committed under the Law;</p> <p>(b) a person might reasonably establish a defence that the contravention was due to the act or default of another person.</p>
<b>Scope of delegation:</b>	To recommend proceedings are taken against the person who is considered to have committed the offence, according to Article 51, paragraph (3).

<b>Legislation:</b>	Food Safety (Jersey) Law 1966
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 59 – to obtain information as to the ownership of premises to enable the Minister to perform any of its functions under the Law.
<b>Scope of delegation:</b>	To require the occupier of any premises, and any person who either directly or indirectly receives rent in respect of any premises, to state in writing the nature of his own interest in those premises and the name and address of any other person known to him as having an interest in those premises.

<b>Legislation:</b>	Food Safety (Miscellaneous Provisions) (Jersey) Law 2000
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	<p>Article 2 – to investigate a complaint, or detect, where no complaint has been made, that a health risk condition is fulfilled with respect to any food business.</p> <p>Article 3(1), 3(2), 3(3), 3(10), 3(11) – to serve an emergency prohibition notice on the proprietor of the business, to make application to the Royal Court for an emergency prohibition order, having first notified the proprietor of the business, to issue a Certificate to the effect that sufficient measures have been taken to secure that the health risk condition is no longer fulfilled and to provide reasons for any decision not to issue such Certificate.</p>
<b>Scope of delegation:</b>	<p>To investigate a complaint that the health risk condition is fulfilled with respect to any food business.</p> <p>To cause inspections to be made to detect whether the health risk condition is fulfilled in respect of a food business where no complaint has been made.</p> <p>To consider whether the health risk condition is fulfilled with respect to any food business and, if so satisfied, by an emergency prohibition notice served on the proprietor of the business, impose the appropriate prohibition.</p> <p>To make an application to the Royal Court for an emergency prohibition order and to notify the proprietor of the business of the intention to apply for the order.</p> <p>To issue a Certificate, on application by the proprietor of a food business, to the effect that the Minister is satisfied that the proprietor has taken sufficient measures to secure that the risk condition is no longer fulfilled with respect to the business; or</p> <p>If he determines that the Minister is not so satisfied, to give notice to the proprietor of the reasons for that determination.</p>

<b>Legislation:</b>	Food Hygiene (General Provisions) (Jersey) Order 1967
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.

<b>Function delegated:</b>	<p>Article 31(1) – to determine whether meat imported into the Island is in closed containers of an approved type.</p> <p>Article 31(2) – to determine whether meat imported in contravention of Article 31(1) shall be permitted to remain in the Island.</p> <p>Article 31(3) – to determine whether the place where imported meat is to be conveyed is approved.</p>
<b>Scope of delegation:</b>	<p>(a) Approval of closed containers for the purpose of importing meat into the Island by ship according to paragraph (1) of Article 31.</p> <p>(b) To permit meat which has been imported in contravention of Article 31(1) to remain in the Island.</p> <p>(c) Approval of the places to which meat imported into the Island (in accordance with paragraph (1) of Article 31) may be conveyed in unopened containers.</p> <p>Authority is reserved to the Minister as follows – That it may direct (under Article 31(2) that meat imported in contravention of Article 31(1) shall be re-exported by and at the expense of the importer.</p>

<b>Legislation:</b>	Food Hygiene (General Provisions) (Jersey) Order 1967
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	<p>Article 33(2) and (3) – to determine in –</p> <p>(a) relation to any food premises or stall situated in a market, whether facilities required under the provisions of Articles 17, 18, 19 or 21 of the Order are made available by the authority responsible for administration of the market;</p> <p>(b) respect of any food premises, stall or vehicle, whether by reason of restricted accommodation or other special circumstances it is reasonable to grant exemption in regard to certain requirements.</p>
<b>Scope of delegation:</b>	To grant a certificate of exemption according to the provisions of Article 33, paragraphs (2) or (3) of the Order. Authority is reserved to the Minister in respect of refusal of exemption, specification of a time period or withdrawal of exemption.

<b>Legislation:</b>	Milk and Dairies (General Provisions) (Jersey) Order 1992
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	<p>Article 3 – to keep a register of –</p> <p>(a) persons carrying on the trade of processing dairyman; and</p> <p>(b) premises which are used as processing dairies,</p> <p>and shall remove from such register the name of any person who ceases so to trade and the address of any premises which cease to be so used.</p> <p>Article 4 – to determine whether it may be necessary and proper for the purposes of the Food Safety (Jersey) Law 1966 and the above Order to cause inspections to be made of dairies and dairy farms, or persons in and about such places.</p>

<b>Legislation:</b>	Health Care (Registration) (Jersey) Law 1995
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	<p>Article 3 – to approve registration of persons in registrable occupations.</p> <p>Article 5(2) – if the application for annual registration is not made in the month of December, the name of the registered person be removed from the register.</p> <p>Article 9(1) – to amend the register. If any particulars appearing in the register in respect of the name, qualifications or address of a person are proved ... .. to be, or are to the knowledge ... .. erroneous in any respect.</p>
<b>Scope of delegation:</b>	<p>To approve registrations if the applicant meets the conditions specified in Article 3(1)(a), (b), (c) or (d) of the Law.</p> <p>To remove registrations if the applicant fails to meet the requirement specified in Article 5(2).</p> <p>To amend the register in Article 9(1).</p>

<b>Legislation:</b>	Statutory Nuisances (Jersey) Law 1999
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	<p>Article 4(1) – to take such steps as are reasonably practical to investigate a complaint of a statutory nuisance.</p> <p>Article 4(2) – to cause inspections to be made to detect the presence or existence of a statutory nuisance in respect of which no complaint has been made.</p> <p>Article 5(1):</p> <ul style="list-style-type: none"> <li>– to determine whether or not a statutory nuisance exists, or is likely to occur or recur;</li> <li>– and where a statutory nuisance exists, or is likely to occur or recur, to determine the requirements of the abatement notice that must be served. The requirements may extend to the abatement of the nuisance, or prohibit or restrict the occurrence or recurrence, and the execution of such works and the taking of such other steps as may be necessary for any of those purposes. The requirements should also take into account whether or not the relevant circumstances described in Article 5(8) apply and, if so, whether a valid defence might be claimed that best practicable means were used to prevent or counteract the effects of the nuisance (Article 5(7)). Where reasonable alternative requirements are proposed (see Schedule 3), these may be accepted and the requirements of the notice may be varied or amended accordingly.</li> </ul> <p>Article 5(4) – to decide whether or not to initiate proceedings for an offence under paragraph (4) of Article 5.</p> <p>Article 6(2)(b) – to determine that paragraph (2)(b) of Article 6 should apply, in which case an abatement notice shall be served by fixing the notice to the relevant vehicle, machinery or equipment.</p> <p>Article 7(4) – where an abatement notice has not been complied with, whether or not proceedings are taken for an offence under paragraph (4) of Article 5, to decide whether or not to abate the nuisance and do whatever may be necessary in the execution of the notice (subject to the limitation described below).</p> <p>Article 11(5) – before a vehicle, machinery or equipment is entered, opened or removed under Article 11(1), to notify a</p>

	<p>police officer of its removal and current location.</p> <p>Article 11(6) – after a vehicle, machinery or equipment has been removed under Article 11(1) or (3), to notify a police officer of its removal and current location.</p> <p>Paragraph 10 of the Schedule to the Law – to determine whether the conditions described in paragraph 10 of the Schedule are fulfilled.</p>
<b>Scope of delegation:</b>	<p>The delegation of functions does not extend to the following matters that are reserved to the Minister:</p> <p>Article 7(4) – a decision to abate a nuisance or do whatever may be necessary in the execution of the notice, where this may have significant resource consequences or other implications of a sensitive or contentious nature.</p> <p>Article 7(5) – to decide whether or not to seek the recovery as a civil debt of any expenses reasonably incurred under Article 7(4).</p> <p>Article 7(6) – to determine whether or not the circumstances described in this paragraph apply (i.e. ‘an adequate remedy’) and to initiate proceedings in the Court for the purpose of securing the abatement, prohibition or restriction of a nuisance.</p>

<b>Legislation:</b>	Piercing and Tattooing (Jersey) Law 2002
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	<p>Article 2(1) – the registration of persons and premises in connection with the administration of any treatment in accordance with the Law.</p> <p>Article 2(2) – the prior approval to occasionally administer treatment elsewhere than from the registered premises.</p> <p>Article 3(a), (b), (c) – to prescribe the form of application, categories of treatment in respect of which an application is made and the particulars which the application contains.</p> <p>Article 4 – to determine whether or not a person and premises fulfils the requirements under the Law. To impose conditions on the registration of persons or premises and to maintain the register of persons and premises under the Law.</p>



	<p>To receive notification of any changes of particulars for persons or premises registered.</p> <p>Article 7 – the Environmental Health Officers are authorised as designated officers for the purposes of the Law.</p> <p>Article 11 – the proposal to grant registration subject to conditions, to notify the person concerned of the intention to do so and the reasons therefor.</p>
<b>Scope of delegation:</b>	<p>The delegation of functions does not extend to the following matters that are reserved for the Minister –</p> <p>Article 3(d) – the decision to set a fee for registration and the scale of the fee.</p> <p>Article 4(2) – the decision to refuse to register or renew the registration of a person or premises.</p> <p>Article 10 – the revocation of a registration for a person and where that person is the only registered person at that premises, to revoke also the registration in respect of those premises.</p> <p>Article 11 – where there is a proposal to refuse registration under Article 4 or revoke registration under Article 10, to notify the person concerned of the intention to do so and the reasons therefor.</p>

<b>Legislation:</b>	Nursing Agencies (Jersey) Law 1978
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 2(2) – to grant or renew licences only, according to the provisions of the Law.
<b>Scope of delegation:</b>	Delegated functions do not include authority to attach conditions to the grant of a licence under Article 2(2); to refuse or revoke a licence under Article 2(4); or to hear an appeal under Article 2(5).

<b>Legislation:</b>	Nursing and Residential Homes (Jersey) Law 1994
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.

<b>Function delegated:</b>	<p>(a) To maintain a register for each class of home to which the 1994 Law applies, according to Article 4(1) of the 1994 Law;</p> <p>(b) to register a person in respect of a home to which the 1994 Law applies, according to Article 4(6);</p> <p>(c) to enter the particulars specified in accordance with Article 4(7)(b) and (8)(b) of the 1994 Law;</p> <p>(d) to specify the conditions required under Article 6(1) of the 1994 Law;</p> <p>(e) to give notice in respect of an application for registration, under Article 9(1) and Article 10(1) of the 1994 Law;</p> <p>The delegate may – under Article 6(2), (2A) and (3) –</p> <p>(f) apply such conditions as he may consider appropriate for the purposes specified in Article 6(2) and 6(2A);</p> <p>(g) vary or remove any conditions for the time being in force in respect of a home by virtue of Article 6 of the Law, or</p> <p>(h) impose an additional condition,</p> <p>either on the application of a person registered in respect of it or without such an application.</p> <p>The delegate may – Article 8(f) –</p> <p>Cancel the registration of a person in respect of a home to which the Law applies at the request of that registered person.</p>
<b>Scope of delegation:</b>	<p>Delegated authority does <u>not</u> extend to –</p> <p>(i) refusal of a registration (Article 7); cancellation of a registration (Article 8(1)(a), (b), (c), (d) or (e), or consideration of any objections or representations according to Article 9(5) of the 1994 Law.</p>

<b>Legislation:</b>	Nursing and Residential Homes (No. 2) (Jersey) Law 1997
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.

<b>Function delegated:</b>	<p>(a) To register a person in respect of a nursing home, according to Article 3(1), and to request the particulars detailed in Article 3(3), i.e. whether or not the home is to receive women immediately before or after childbirth;</p> <p>(b) to determine whether or not premises are a residential home, according to Article 4(2)(a), and to serve a notice to that effect according to Article 4(2)(b);</p> <p>(c) to register a person in respect of a residential home, according to Article 4(3);</p> <p>(d) to register a person in respect of a mental nursing home, according to Article 5(2), and to request the particulars detailed in Article 5(3), i.e. whether or not it is proposed to receive patients liable to be detained under the 1969 Mental Health Law;</p> <p>(e) to serve a notice specifying proposals in regard to a number of persons or other conditions related to a registration, according to Article 7(2); and to issue a certificate according to Article 7(3).</p>
<b>Scope of delegation:</b>	Delegated functions do <u>not</u> extend to the authority to consider any representations or appeals in regard to the conditions relating to a registration.

<b>Legislation:</b>	<p>Nursing and Residential Homes (Jersey) Law 1994</p> <p>Residential Homes (General Provisions) (Jersey) Order 1995</p> <p>Article 20</p>
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 20 – to determine according to the Article that the person registered has contravened or failed to comply with Article 6, 10, 11, 13, 14, 15, 16 or 19 of the Order.
<b>Scope of delegation:</b>	<p>To serve a Notice on the person registered specifying –</p> <p>(a) in what respect in its opinion the person registered has failed or is failing to comply with the requirements of that Article;</p> <p>(b) what action the person registered should take so as to comply with that Article;</p>

	(c) the period not exceeding 3 months, within which the person should take action.
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<b>Legislation:</b>	Nursing and Residential Homes (Jersey) Law 1994  Nursing Homes and Mental Nursing Homes (General Provisions) (Jersey) Order 1995 Article 16(3)(a)
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 16(1) and (2) – to determine according to the Article whether an offence against the Order appears to have been committed.
<b>Scope of delegation:</b>	To serve a notice in writing on the person registered specifying –  (a) the provision of the Order with which that person has failed or is failing to comply;  (b) the respect in which that person has failed or is failing to comply with that provision;  (c) the action which should be taken by that person so as to comply with that provision; and  (d) the period within which such action should be taken.

<b>Legislation:</b>	Ancillary Dental Workers (Jersey) Regulations 1974
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 8 – to maintain a roll for each class of ancillary dental worker, including the information specified in the Article.  Article 9 – to determine whether or not a person fulfils the requirements under the Article.
<b>Scope of delegation:</b>	To enrol an applicant according to Article 9.  To retain a name on the roll according to Article 10.

	To restore a name to the roll according to Article 11.
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<b>Legislation:</b>	Opticians (Registration) (Jersey) Law 1962
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 6 – to register companies under the Article.

<b>Legislation:</b>	Public Health (Vessels and Aircraft) (Jersey) Law 1950
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 3 – to enter any premises, vessel or aircraft for the purpose of executing, or superintending the execution of, any Orders made under this Law.

<b>Legislation:</b>	Burials and Exhumations (Jersey) Law 2004
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 3(1) – to inspect any burial ground to ascertain whether Regulations made under Article 2(3) have been complied with.

<b>Legislation:</b>	International Health Regulations (2005) ( <i>of the World Health Organisation</i> )
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Annexe 7 – paragraph 2(f).
<b>Scope of delegation:</b>	To register General Medical Practices to operate as a designated Yellow Fever Vaccination Centre.

<b>Legislation:</b>	Drainage (Jersey) Law 2005
<b>Delegate:</b>	Head of Health Protection Services or, in his absence, his nominated deputy.
<b>Function delegated:</b>	Article 15(2) – to act as the point of consultation on behalf of the Minister for Health and Social Services for matters relating to the repair of sewers and drains, in the interests of public health.
<b>Scope of delegation:</b>	To consult with the Minister for Transport and Technical Services, or officers acting on the Minister’s behalf, on work to be undertaken under Article 15(1) relating to the repair of sewers and drains.