STATES OF JERSEY

DRAFT MENTAL HEALTH (JERSEY) LAW 201-

Lodged au Greffe on 2nd August 2016
by the Minister for Health and Social Services

STATES GREFFE

Jersey

DRAFT MENTAL HEALTH (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 (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: 29th July 2016

REPORT

The importance of mental health

1. Mental health problems can affect people of all ages. It is likely that one in 4 people will experience a mental health problem at some point in their life, and one in 6 adults is likely to be experiencing a mental health problem at any one time[1]. One in 10 children aged between 5 and 16 has a mental health problem, and many continue to have mental health problems into adulthood[2]. 50% of lifetime mental health problems have already developed by the age of 14.[3]

2. Among people under 65, nearly half of all ill-health is mental illness. In other words, nearly as much ill-health is mental illness as all physical illnesses put together[4]. People with severe mental illness die on average 20 years earlier than the general population.[5] The increase in people living longer is likely to see an increase in the number of people living with dementia, as well as other long-term life-limiting conditions.

3. Mental health problems can have a wide-ranging impact for individuals in a number of areas of their lives, including: housing, employment, education, training, physical health and relationships with family and friends.

4. The provision of appropriate care and support to people experiencing mental health problems is an important responsibility, not just of the Health and Social Services Department, but of society as a whole.

5. In 2015 a local Mental Health Strategy was endorsed by the States Assembly. As well as the imperative to improve the quality of statutory services, the strategy emphasizes the need for government departments to work closely together, alongside service users and carers. These combined efforts are focused on promoting and improving wider public mental health and wellbeing, reducing stigma and discrimination, and achieving greater equity between mental and physical health. The strategy also reflects wider policy and legislative requirements placed on health and social care.

Why do we need a new Mental Health Law?

6. It is essential that the provision of mental services is underpinned with a modern and clear legal framework, which safeguards the rights, dignity and wellbeing of people experiencing mental health problems, and also provides assurance to the Public that those persons and the Public will be protected from harm.

7. At present, the treatment of people affected by mental disorders is underpinned by the Mental Health (Jersey) Law 1969 (the "1969 Law"). There are a number of difficulties with the 1969 Law, and the purpose of this draft Law is to replace it with a modern Mental Health Law that is fit for purpose in the 21st Century.

[1]McManus S, Meltzer H, Brugha T et al. (2009) *Adult Psychiatric Morbidity in England, 2007: Results of a household survey* Leeds: NHS Information centre for health and social care

[2]Green H, McGinnity A, Meltzer H et al. (2005) *Mental Health of Children and Young People in Great Britain, 2004* Basingstoke: Palgrave Macmillan

[3] No Health without Mental Health presentation, O'Connor, Dr. S. RCPsych

[4]The Centre for Economic Performance's Mental Health Policy Group (2012) *How Mental illness loses out in the NHS:* London School of Economics

[5] No Health without Mental Health Department of Health 2011

8. Although the 1969 Law has, from time to time, been updated in some minor respects, it has not been updated comprehensively to reflect the many advances that have been made in the care and treatment of people experiencing mental illness, or to afford the safeguards for their dignity and liberty that are available elsewhere.

9. Frequent criticism has also been directed at the 1969 Law and the Criminal Justice (Insane Persons) (Jersey) Law 1964 (the "1964 Law"), which do not enable the courts to, where appropriate, divert people who are accused of committing criminal offences out of the criminal justice system to receive appropriate treatment for mental disorder. Neither the 1969 Law nor the 1964 Law are now fit for purpose, and they need to be replaced.

10. Further, while Jersey's mental health legislation must be appropriate for our circumstances, it is also important that our legislation is sufficiently aligned with equivalent legislation in the UK and Guernsey. A person's circumstances, or the availability of specialist services elsewhere in the British Isles, will sometimes mean that a person needs to be transferred to another place in the British Isles to receive care. The legislation in the UK and in Guernsey has already been extensively modernised, and it is important that Jersey's legislation keeps pace to ensure that people can access the care they need, when they need it and with appropriate safeguards.

11. The absence of separate legal provision from the 1969 Law, to support the provision of care for people who lose capacity to make decisions for themselves, also fails to reflect the reality that people experiencing mental illness will usually engage with different services. Such people will typically be provided with different treatments compared with people who have a learning disability or physical injury or illness that causes mental disorder (e.g. dementia). For this and other reasons, the implementation of modern mental health legislation needs to be combined with an appropriate legal provision which supports people who lose capacity to make decisions for themselves and whose needs will often be different.

How has the new Mental Health Law been developed?

12. In light of the challenges mentioned above, the Council of Ministers agreed, in April 2014, that a project should commence to not only replace the 1969 Law with a new Mental Health Law, but also to simultaneously develop a new piece of legislation to enable people to plan for a time when they may lose capacity to make decisions for themselves. This legislation would ensure that, when a person lost the capacity to make a decision, they would be supported to continue to make decisions and determine their future to the fullest extent possible. The ambitious objective of this project was to consult widely on the content of these Laws, to have them drafted, and then to implement them by April 2018.

13. To fulfil this objective, a project team of officers from the Health and Social Services Department, Law Officers' Department, Law Draftsman's Office and Chief Minister's Department was established.

14. The project team initially drew on the experience and expertise of their counterparts in Guernsey, where a comprehensive new Mental Health Law came into force in 2011. The project team then initiated a consultation process and the iterative development of the new Mental Health Law and Capacity Law in several phases. The consultation process culminated in a public consultation on a new Draft Mental Health (Jersey) Law 201-, along with the

Draft Capacity and Self-Determination (Jersey) Law 201- in the second half of 2015.

15. The level of participation and commitment to the consultation shown by the public and stakeholders in attending consultation events and making timely, considered and helpful written submissions has been exceptional. The people who gave of their time included private individuals and carers, representatives from voluntary and community sector organisations, front-line Health and Social Services staff, the States of Jersey Police, staff from H.M.P. La Moye, the judiciary (both from the criminal courts and Mental Health Review Tribunal) and Judicial Greffe, the Viscount's Department, the Law Society, and the Safeguarding Partnership Board. Submissions were also received from a range of professionals, including a number of legal professionals providing curatorship services.

16. The hard work and dedication of all these organisations and individuals was essential to the swift progress of this project. However, particular thanks should go to *Mind Jersey*, which provides essential independent advocacy services for people who experience mental illness. The *Mind* representatives drew on their experience and expertise, as well as further professional support, to provide detailed and helpful feedback on both draft Laws, and ensured that their clients' interests were represented in the consultation process.

17. The Project Team has given careful consideration to the consultation responses, including those submitted in the recent public consultation in settling the provisions in the draft Laws.

Summary of this draft Law

18. The purpose of the Draft Mental Health (Jersey) Law 201- (the "draft Law") is to ensure that the provision of mental health services is underpinned with a modern and clear legal framework which safeguards the rights, dignity and wellbeing of people experiencing mental health problems. It also provides assurance to the Public that those persons and the Public will be protected from harm.

19. The draft Law is based on a series of values and principles that will be set out in the Code of Practice that will be published under the draft Law by the Minister for Health and Social Services. These are that –

    (a) informal care and treatment should always be considered before recourse to compulsory powers;

    (b) patients who are detained under the draft Law or who are receiving treatment voluntarily should be involved as far as possible in developing and reviewing their own care plans, with the involvement of people of their choice, where possible;

    (c) the health and safety of the individual patient and the protection of the public are of key importance in determining whether compulsory powers should be imposed;

    (d) consideration should be given to the long-term needs of the patient wherever possible; and

    (e) where compulsory powers are used, care and treatment should be in the least restrictive setting consistent with the patient's best interests and safety, and the safety of the Public.

20. Like the 1969 Law, the draft Law will set out the process that must be followed when it is necessary to detain a person for the purpose of assessing the person's mental health and wellbeing, or to provide them with appropriate treatment. It will set out emergency powers for doctors and nurses to detain an individual when that appears to be necessary to protect the person or others from harm. However, the safeguards on the exercise of those powers have been increased, while the maximum period for which a person may be detained for treatment has been reduced.

21. The Police, working together with Health and Social Services professionals, will continue to have the power to detain a person temporarily and take them to an appropriate place of safety so that an assessment of the person's mental health can take place. The powers in the draft Law can be used more flexibly and appropriately than those in the 1969 Law and, in conjunction with the enactment of these provisions, work is taking place to ensure that the use of Police Stations as a place of safety is minimised and, if possible, eventually eliminated.

22. The new Law will include additional measures to protect the human rights of people detained under the new Law. In particular, the new Law will make explicit provision regarding the circumstances in which an individual who is detained may be treated without his or her consent – including provision for the review of some patients' treatment plans by independent 'second opinion' doctors.

23. The draft Law will also reflect developments in the treatment of mental health service-users. For example, it will enable individuals to be treated in the community for extended periods – rather than, for example, in a hospital setting, but with the ability to recall the person to hospital if that is necessary in the patient's interest or for the protection of other persons.

24. The draft Law will continue to enable a person with a mental disorder (whether that be a mental illness, learning disability or a disorder arising from physical illness or injury) to have a guardian appointed to safeguard the person's welfare while they continue to live in the community. This will help to ensure that packages of care and support can be most effectively tailored to the person they are provided for.

25. Under the 1969 Law, a person who is detained for assessment or treatment, or who is subject to guardianship, can already challenge that detention or guardianship at the Mental Health Review Tribunal. Under the draft Law, the Mental Health Review Tribunal will continue to play an important role in safeguarding patients' rights. However, the draft Law will also make express provision for the appointment of Independent Mental Health Advocates (IMHAs) who will help patients and persons affected by the draft Law to understand their rights and assist them to exercise them in their own best interests.

26. The draft Law will also provide the courts with the appropriate powers to dispose of criminal cases involving individuals who are mentally disordered. The draft Law will allow the Magistrate's and Youth Courts, as well as the Royal Court, to determine whether or not an individual is capable of participating in a criminal trial. Where an individual is not capable of being tried, or where they are capable but require treatment for mental disorder, it will allow the courts to send individuals to hospitals for treatment, or another

place that is deemed appropriate for the safety of the individual and the general public.

Key provisions in the draft Law and changes from the 1969 Law

27. A detailed account of the effects of each Part of the draft Law is set out in the Law Draftsman's Explanatory Note. The human rights notes provided by the Law Officers' Department set out a detailed account of the human rights issues raised and addressed by the draft Law. The purpose of this part of the report is to explain the reasons for adopting the approach reflected in some key provisions of the draft Law, and the differences compared with the 1969 Law.

New definition of mental disorder

28. In Article 1 of the draft Law, the definition of "*mental disorder*" has been simplified so that it captures "*any disability or disorder of mind or brain*." This is in line with the definition used in the UK and Guernsey, and this open definition will help to ensure that people are not excluded inappropriately from mental health services and that compulsory powers can, where necessary, be used to meet the needs of the individual and without reference to particular categories of mental disorder.

29. This open definition is balanced by tests that are applied when deciding whether to compulsorily admit someone. These will continue to ensure that persons are only *compulsorily* admitted when this is necessary in the interests of the patient's health and safety or for the protection of other persons.

30. However, the application of the definition of mental disorder is limited by Article 1(2) of the draft Law so that people with a learning disability may only be detained for assessment or treatment under the draft Law if their disability is associated with "*abnormally aggressive or seriously irresponsible conduct*". In most cases, this will mean that any restrictions that it is necessary to impose on the liberty of a person with a learning disability will need to be authorised under the provisions of the Draft Capacity and Self-Determination (Jersey) Law 201- (the "draft Capacity Law"). This reflects best practice in relation to the provision of care to people with learning disabilities, which focuses less on compulsory admission and treatment, and more on the provision of care and support to enable those people with learning disabilities to live full lives in the community.

31. The limit on the application of the definition of mental disorder does not apply to applications for guardianship under Part 4 of the draft Law. As a result, guardianship can continue to be used to support any person with a learning disability when it is appropriate to do so in all the circumstances.

New roles

32. The following new roles are created or recognised by the draft Law to ensure higher standards of care, the safeguarding of the individual, and better decision-making surrounding the treatment of those suffering from a mental disorder –

    (a) Authorised Officer – an Authorised Officer will co-ordinate the process of assessing a person's mental health, and be responsible for making any application for compulsory admission for assessment, treatment or guardianship. They will also arrange for any subsequent admission to an approved establishment. This role will usually be performed by a social worker, but may potentially be performed by a

mental health nurse, occupational therapist or psychologist. Any Authorised Officer will need to have specialist experience or training in the field of mental health and fulfilment of this role. Specialist training in this role will reinforce the importance of acting diligently and safeguarding the patient's rights, by ensuring compulsory powers are only used where necessary and that the least restrictive approach to patient care is pursued. This role will be similar to that of Approved Mental Health Professionals in England and Wales.

(b) Approved Practitioners – under the 1969 Law, both of the medical recommendations that are required to support an application to detain a person can be provided by a registered medical practitioner, including a G.P., who may not necessarily have expertise in mental health. Under Part 3 of the draft Law, at least one of the medical recommendations must be provided by an approved medical practitioner with appropriate training and expertise in mental health. Further, only an approved practitioner will be able to authorise an emergency admission for assessment under Article 15 of the draft Law, and such practitioners will have roles in relation to the treatment provisions in Part 6 of the draft Law.

(c) Second Opinion Approved Doctor ("SOAD") – Part 6 of the draft Law makes provision about consent to treatment for mental disorder and the circumstances in which a patient may be provided with treatment without his or her consent. A SOAD will be an independent psychiatrist, who in the circumstances described in Part 6, will be responsible for reviewing certain types of treatment that may take place without consent and certifying whether the treatment should continue or take place.

(d) Independent Mental Health Advocate ("IMHA") – Article 79 of the draft Law enables the States, by Regulations, to make further provision regarding the role of IMHAs. IMHAs will provide assistance to patients and persons affected by the provisions of the draft Law to help them understand and exercise their rights.

33. Mental Health Law Administrator – Article 4 provides that the Minister must appoint a person to act as the principal administrator for the purposes of the draft Law. In practice, it is anticipated that the Administrator will have many of the Minister's functions of checking applications and authorising detentions delegated to them. The Administrator will also have an important role to play in ensuring that patients and their relatives are notified of the imposition of compulsory detention, and ensuring that detention is subject to timely review by the Mental Health Review Tribunal where that is appropriate.

Approved establishments

34. At present, the 1969 Law provides that persons may be compulsorily admitted for assessment or treatment in a hospital or establishment administered by the Minister for persons suffering from illness, mental disorder or addiction. The draft Law makes it clear that a person may be admitted to any approved establishment, which may include suitable private establishments approved by the Minister for Health and Social Services from time to time for this purpose. Both public and private establishments providing health and social care for people with mental disorders will be regulated under the Regulation of Care (Jersey) Law 2014, which is expected to come into force before this Law.

Patient's nearest person

35. The draft Law will provide that patients will have a nearest person who will have powers that enable them to protect the patient's rights and make sure their views are heard. The nearest person may be either the patient's nearest relative (e.g. their spouse, civil partner or parent), or a person nominated by the patient. A patient might, for example, nominate a friend or family member as his or her nearest person when there has been a breakdown in the relationship with the person who would otherwise be his or her nearest relative.

36. As is the case now, if the patient has no nearest person, or the nearest person is incapable of acting or unsuitable to act, then an application may be made to the Royal Court for the appointment of a nearest person.

Voluntary admissions

37. As is the case under the 1969 Law, there is nothing in the draft Law to prevent a patient, who has capacity to consent, from agreeing to be admitted to an approved establishment to receive treatment for a mental disorder.

Compulsory admissions

38. Under the draft Law there will continue to be powers available to mental health professionals to ensure that people who are, or who are thought to be, suffering from a mental disorder and who are unable to consent or unwilling to accept treatment on a voluntary basis, to receive the care they require.

39. Compulsory powers will only be used to authorise the assessment of a person's condition or to provide them with treatment for a mental disorder where that is necessary, taking into account both the needs of the patient, and the risk of harm to themselves and other people.

40. As is the case under the 1969 Law, there will be 4 powers to compulsorily admit a person to an approved establishment set out in Part 3 of the draft Law –

    (a) emergency admission to an approved establishment (Article 15);

    (b) detention by a nurse (Article 17);

    (c) assessment authorisation (Article 21); and

    (d) treatment authorisation (Article 22).

41. However, the period for which these powers may be used and the process for exercising them will change in some respects.

Emergency admissions

42. In the draft Law, an emergency admission can be authorised by an Approved Practitioner, and would allow the person to be detained in an approved establishment for up to 72 hours for the purpose of observation and assessment, though they might be discharged sooner if it was safe to do so. There will be no right of appeal to the Mental Health Review Tribunal in respect of such detention.

43. In the draft Law, a patient can also be detained under the authority of a nurse for up to 6 hours if the patient is voluntarily receiving treatment for a mental disorder in an approved establishment and tries to leave the establishment when it appears to the nurse it will not be safe for them to do so. This power would be used to hold the person so that an Approved Practitioner can assess them and decide whether detention is required.

Assessment or treatment authorisation

44. Under the draft Law, a person may be compulsorily admitted to an approved establishment for assessment or treatment following an application by an authorised officer which is supported by 2 medical recommendations – at least one of the recommendations needs to be made by an Approved Practitioner, the second recommendation can be made by either an Approved Practitioner or any registered medical practitioner. The new professional roles provided for under the draft Law, and additional training for people fulfilling those roles, will help to ensure that an appropriate level of professional expertise and discretion is applied when making decisions to detain a person for assessment or treatment. Further, all applications will need to be sent to and authorised by the Minister, who will be assisted in this role by the Mental Health Law Administrator. This will help to ensure consistency in content and quality of applications for detention, and help identify any problems with a compulsory admission at an early stage.

45. The grounds for detaining a patient for assessment or treatment under these provisions will remain the same as under the 1969 Law. These grounds are that: the patient appears to be suffering from a mental disorder of a nature or degree that warrants assessment or treatment in an approved establishment; and that it is necessary to detain the patient in the interests of the patient's health and safety or that of others.

46. Where a person is compulsorily admitted for assessment, the person may be detained for no longer than 28 days, as is the case under the 1969 Law. However, where the person is admitted for treatment, they may be detained for 6 months before authority for their detention must be renewed. Detention could be renewed for a further 6 months and then for further periods of 12 months.

47. Under the 1969 Law, a person could be detained for up to 12 months before the authority to detain the person needed to be renewed. These new maximum periods of detention are the same as those under sections 2 and 3 of the Mental Health Act 1983. This is an important change and reflects that improvements in the treatment available for people experiencing mental illness mean that many of those people will recover sufficiently within 6 months to enable them to be safely discharged.

48. The Mental Health Review Tribunal is discussed in the next section. It will continue to be the case that a patient may make application to the Mental Health Review Tribunal, requesting that the need for continued detention or guardianship is reconsidered. One application to the Tribunal could be made during the term of the Assessment Order. Where a patient is detained for treatment, they can request that the Tribunal considers the need for continued detention once during each 6-month period for which detention is renewed. Thereafter, one appeal could be made during each subsequent 12-month period.

Mental Health Review Tribunal

49. A Mental Health Review Tribunal is currently provided for in, and operates pursuant to, the 1969 Law and the Mental Health (Review Tribunal) (Procedure) (Jersey) Order 1971.

50. The rules of procedure for the Tribunal have recently been modernised in some respects and a lot of work has already been done, collaboratively,

between *Mind Jersey*, the Law Society and Judicial Greffe to ensure that Tribunal members and legal advocates appearing before the Tribunal are provided with appropriate training to ensure that high standards are maintained.

51. The Law will continue to provide for that Tribunal and a system to consider applications for discharge from detention authorised under an Assessment or Treatment Authorisation pursuant to Part 3 of the draft Law, from guardianship under Part 4 of the draft Law, or from a Treatment Order.

52. The Tribunal Panel will continue to consist of legal, lay and medical members, and work will take place to ensure that Panel members –

- have high levels of expertise; and
- are sufficiently independent of the Health and Social Services Department.

Leave of absence changes

53. When a person has undergone compulsory treatment and there is a significant history of lack of engagement or continuing relapse, the ability to offer community treatment and, where necessary, a smooth transition back to an approved establishment setting is essential.

54. Under the new Law, leave of absence from hospital can be granted either for a short period (i.e. a day trip or to visit family) or for longer or indefinite periods – for example, to support an individual to return to the community. Leave may be granted subject to conditions, including that the patient complies with treatment.

Consent to treatment and safeguards on compulsory treatment

55. At present the 1969 Law does not contain explicit provision describing the circumstances in which treatment can be given to a patient without his or her consent, whether because consent is refused or because the person lacks capacity to consent.

56. Part 6 of the draft Law includes clear, express powers enabling certain treatments to be administered to a patient without his or her consent, either in an emergency or if the patient is liable to be detained pursuant to an Assessment or Treatment Authorisation.

57. Wherever possible, consent should be obtained from a patient before any course of treatment is administered. Article 42 of the draft Law makes it clear that where consent is provided to treatment, a patient can withdraw that consent at any time. The new Capacity Law will create a new statutory test that would apply when assessing a person's capacity to consent to medical treatment, including treatment for mental disorder. That test will be applied to a particular decision at a particular time by the doctor proposing the treatment. If a patient lacks capacity (as detailed in the Draft Capacity and Self-Determination (Jersey) Law 201-), a decision can be made to treat them if it is in their best interest.

58. Article 39 of the draft Law makes it clear that medication may be given to a patient who is liable to be detained for up to 3 months without the patient's consent. At the end of that period, the responsible medical officer can only continue to treat if the person has capacity and consents to that treatment or if a Second Opinion Approved Doctor ("SOAD") has assessed the patient and treatment and certifies that it should be given.

59. The SOAD's role is included for the first time in the draft Law, but already exists in the UK and Guernsey. A SOAD will be a psychiatrist who is approved to undertake assessments. It is expected that SOADs who undertake this work in Jersey will be practising in the UK or Guernsey, so that they can provide a view that is truly independent of clinical decision-making in Jersey.

60. Article 44 provides a power to provide emergency treatment to a patient without consent where that is immediately necessary to save the patient's life. It also provides a power to provide emergency treatment that is not irreversible, to prevent a serious deterioration in the patient's condition, to alleviate serious suffering by the patient, or if it represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or herself, or to others. Emergency treatment provided to alleviate suffering or prevent a patient acting violently must not be hazardous.

Place of safety

61. At times it will be necessary for the Police to intervene either to ensure someone's safety if they are in a public place, or to access private premises where it is suspected that a person is mentally disordered and in need of urgent assessment or treatment.

62. As is currently the case under the 1969 Law, the new Law will provide the Police with powers to enable –

- a warrant to be issued to enter a private dwelling and remove a person to a place of safety for assessment for up to 72 hours;
- a Police Officer who has concerns that a person found in any other place may be suffering from a mental illness and needs immediate care or control may remove that person to a place of safety for up to 72 hours to enable an assessment to be carried out.

63. There will be a number of designated places of safety, ensuring that the individual is assessed in the safest and most appropriate setting.

Incapacity of defendant in criminal proceedings

64. At present, the Criminal Justice (Insane Persons) Law 1964 provides that the Superior Number of the Royal Court has jurisdiction to determine whether a person is unfit to stand trial for a criminal offence, or whether they may be able to rely on the defence of insanity in respect of an offence. The tests to be applied by the Royal Court in determining these questions are not set out in the 1964 Law, but have been the subject of careful consideration by Royal Court. In a number of key cases, the Royal Court has adopted tests that are compatible with human rights standards, and that differ in some respects from those applied in other jurisdictions, including England. The 1964 Law also contains powers to detain persons found to be unfit to plead or insane.

65. Part 8 of the draft Law codifies the test that is applied by the Royal Court and Magistrate's or Youth Court to determine whether a defendant is capable of participating in a criminal trial. The draft Law also makes more comprehensive provision about the procedures to be followed before such a finding may be made. Where the defendant is not capable, Part 8 also makes new provision as to the powers of the Court to make orders so that the person can be detained for appropriate treatment.

66. In addition, new provision is made in Article 72 of the draft Law for circumstances where the defendant is capable of participating in a criminal trial, but at the time of the offence was suffering from a mental disorder to such a substantial degree that they ought not to be held criminally responsible for their actions. A Court making such a finding will also be able to make an order so that the person can be detained for appropriate treatment.

Powers of the courts in criminal proceedings

67. A significant criticism of existing mental health law in Jersey is the absence of powers available to the Court to make orders as to the assessment and treatment of persons whose offending behaviour is associated or influenced by their mental disorder. Reform of the Court's disposal powers in this respect is a key objective of the proposed Law.

68. Accordingly, Part 9 of the draft Law creates a new suite of powers that can be used by the courts to ensure that defendants who appear to be, or are, suffering from a mental disorder can be detained for appropriate assessment or treatment in an approved establishment either during the course of, or following conviction for, a criminal offence. Most of these powers will be available to all of the criminal courts, though the Royal Court alone will have additional powers to place restrictions on the discharge of any patient whose offence and part-offending behaviour mean that they pose a risk to the Public and to transfer prisoners to an approved establishment for treatment during a prison sentence.

69. The power to make orders for compulsory assessment or treatment in Part 9 is subject to a number of safeguards to ensure that they are only made where there is sufficient medical evidence that detention is necessary to assess or treat a defendant.

Fraud and forgery

70. Article 80 makes provision such that for those found guilty of forgery and fraud in relation to the new Law, the penalty will be increased to up to 2 years' imprisonment or an unlimited fine.

Sexual offences

71. Part 10 of the draft Law makes more comprehensive and modern provision to protect mentally disordered individuals from sexual exploitation. These provisions reflect the approach to the modernisation of sexual offences that is planned to take place generally.

Treatment away from Jersey

72. There will be times when specialist care and treatment will not be available or where it is inappropriate to provide it locally.

73. The new provisions in Parts 3 and 9 of the draft Law will help to ensure that there is parity between Jersey's legislation and that of the UK and Guernsey, which will help ensure a smooth transition to specialist care and treatment off-Island. This will also ensure continuity of legal status on returning to Jersey and immediate access to care and support.

74. Under Part 12 of the draft Law, the Royal Court will be able to order the transfer of a patient who is detained following conviction for an offence, for the purpose of them receiving specialist treatment in a facility in the UK. In other cases, the Minister will be able to arrange to transfer a patient to or from the UK or Guernsey, but before transferring a patient to the UK, the Minister

will need to obtain the approval of the Mental Health Review Tribunal. Reciprocal provision already made in sections 35, 35A, 35B and 35D of the Mental Health Act 1983 will also facilitate the transfer of patients to and from England and Wales where that is appropriate.

Curatorship

75. The new Law will repeal and not replace the current outdated provisions for curatorship. However, there will be provision in the new Capacity and Self-Determination Law for new powers and processes to support a person and make decisions in the person's best interests where the person does not have capacity to make a decision. Separate provision will be made under the Capacity Law for the transfer of persons from curatorship to support under the new Capacity Law.

Code of practice

76. The new Law will require the Minister for Health and Social Services to publish a code of practice to be followed by all staff regarding the medical treatment of patients.

Financial and manpower implications

The financial and manpower implications of the Draft Mental Health (Jersey) Law 201- and Draft Capacity and Self-Determination (Jersey) Law 201- are closely related and have been assessed together. The financial and manpower implications of approving both pieces of legislation will be 6 x full-time equivalents, being 4 in the Judicial Greffe, one in the Law Officers' Department and one in the Health and Social Services Department, at a total cost of approximately £1,166,000 over 2016, 2017 and 2018. These staff will be responsible for the preparatory work to enable this legislation to be developed to the point where it can be brought into force. Funding for this expenditure will be from existing budgets, and the proposed funding included in the MTFP Addition.

Bringing both pieces of legislation into full force as described in the report, via Appointed Day Acts, will have further financial and manpower implications. A sum of £1,900,000 over 2018 and 2019 has been identified within existing budgets, and the proposed funding included in the MTFP Addition to meet these costs. The final detailed implications will be dependent upon the legislation development, preparatory work, and timing of the Appointed Day Acts. The papers supporting the proposed Appointed Day Acts will set out the full implications and funding at that time.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

Human Rights Notes on the Draft Mental Health (Jersey) Law 201-

1. These Notes have been prepared in respect of the draft Mental Health (Jersey) Law 201- (the "draft Law") by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR").

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

2. The draft Law will repeal and substantially re-enact (with appropriate modernisations) the Mental Health (Jersey) Law 1969. It would also introduce wholly new provisions for Jersey, relating in particular to representation and safeguarding of individuals suffering from mental disorder in the context of health care and of civil society at large, and to the powers of the Court for dealing with such individuals when they appear as defendants in the criminal justice system.

3. The draft Law engages various Articles of the ECHR, which are addressed in turn.

Article 3 – Prohibition of ill treatment

4. Article 3 ECHR provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". Article 3 ECHR is engaged by numerous provisions in the draft Law: consent to treatment (Part 6); offences against those in receipt of care, etc. (Part 10); use of police station as a place of safety (Part 5); removal of alien patients (Article 88).

Consent to treatment (Part 6)

5. Part 6 of the draft Law contains various provisions concerning the administration of treatment to a patient in circumstances where the patient consents and those where the patient has not consented. In particular, Article 39 of the draft Law permits the administration of treatment without the patient's consent, and Article 41 of the draft Law permits the administration of specified treatment (see Article 41(2)) to patients in circumstances, potentially, where that patient has capacity and has not consented to receiving the treatment, but a second opinion approved doctor ("SOAD") has certified that the treatment should be given.

6. The forcible administration of treatment has the potential to engage Article 3 ECHR; however, a measure which is a therapeutic necessity, in terms of preserving the physical or mental health of a patient cannot be regarded as inhuman and degrading. In this context, Article 3 ECHR will only be contravened by the administration of medicine against a patient's will where the treatment reached the minimum level of severity for ill-treatment, and medical and therapeutic necessity for the treatment had not been convincingly shown to exist.

7. It is imperative where treatment is to be administered to a patient without his consent that the provision defines with sufficient precision the circumstances in which treatment can be given. Those circumstances do not require the incapacity of the patient, but may include that the treatment is required to protect other persons or the patient from serious harm. Articles 39 and 41 of the draft Law, which each permit treatment to be administered to a patient who has not consented, are sufficiently precise in their terms. Article 39 is limited by the provisions of Articles 40 and 41, which specify forms of treatment the administration of which requires consent and/or approval of a SOAD, and also by the requirement that treatment can only be given without consent under the direction of the patient's Responsible Medical Officer ("RMO"). Where a patient does not consent to treatment, Article 41 requires a certified opinion from a SOAD that the patient is not capable of understanding the nature, purpose, and likely effects of the proposed treatment, or has not consented to receive it, but having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given to that patient. These grounds are clear and the expertise of the SOAD are such that the necessity of the treatment should, in practice, be adequately assessed for Article 3 ECHR purposes.

Offences against those in receipt of care, etc. (Part 10)

8. Article 3 ECHR places a positive duty on states to provide effective protection of vulnerable people against torture or inhuman and degrading treatment. Ill-treatment of mentally disordered people and sexual abuse amounts to inhuman and degrading treatment, and states have a duty to provide effective protection via the criminal law. Part 10 of the draft Law fulfils this obligation by making provision for a number of criminal offences in connection with the operation of the draft Law, and for the protection of people suffering from mental disorder.

Use of Police Station as a place of safety (Part 5)

9. Part 5 of the draft Law provides that a Police Station may be used as a place of safety for the detention of persons appearing to be suffering from a mental disorder. A person may be detained under the powers in Part 5 for a period not exceeding 72 hours; and it will be important in practice, from an Article 3 ECHR perspective, for this threshold not to be exceeded. Where a person is detained in a place of safety where no appropriate care is available to him, for a period in excess of the relevant threshold, those conditions could constitute degrading treatment for the purposes of Article 3 ECHR.

Removal of alien patients (Article 88)

10. Article 88 provides a power for the Minister to remove a patient who is an alien to a country or territory outside the British Islands for the patient's care and treatment there. The removal of a patient under this provision might engage Article 3 ECHR if there is a risk of the patient being the subject of inhuman or degrading treatment in the country to which he is sent. Article 88 includes a safeguard in this respect in the requirement for the Minister to be of the view that removal from the Island is, among other things, in the interests of the patient (Article 88(1)).

Article 5 – Right to Liberty and Security

11. Article 5 ECHR protects the physical liberty and security of the person. Its aim is to ensure that no one is deprived of their liberty in an arbitrary or unjustified fashion. Article 5 ECHR is not concerned with mere restrictions on liberty of movement, and the difference between restrictions on movement serious enough to fall within the ambit of deprivation of liberty under Article 5 ECHR and mere restrictions of liberty, is one of degree or intensity, not one of nature or substance. The European Court of Human Rights ("ECtHR") has confirmed that a deprivation of liberty for the purposes of Article 5(1) ECHR has 3 elements –

    (a) the objective element of confinement in a restricted space for a non-negligible period of time;

    (b) the subjective element that the person has not validly consented to that confinement; and

    (c) the detention being imputable to the state[6].

12. Article 5(1) ECHR permits a deprivation of liberty in a number of specific cases, and where that deprivation is lawful and in accordance with a procedure prescribed by law. One such case is the lawful detention of persons of unsound mind. An individual cannot be deprived of his liberty as being of 'unsound mind' unless the following 3 minimum conditions are satisfied –

    (a) The individual must be reliably shown, by objective medical expertise, to be of unsound mind, unless emergency detention is required.

    (b) The individual's mental disorder must be of a kind to warrant compulsory confinement. The deprivation of liberty must be shown to have been necessary in the circumstances.

    (c) The mental disorder, verified by objective medical evidence, must persist throughout the period of detention.

13. The detention of a person of unsound mind is required to be in a hospital, clinic or other appropriate institution for the detention of such persons. Finally, it is important to note that the state is granted a margin of appreciation in securing compliance with Article 5 ECHR, which may be achieved in a number of different ways.

14. Article 5 ECHR is engaged principally by: procedures for admission to approved establishments (Part 3); Guardianship (Part 4); other forms of legal custody: place of safety, etc. (Part 5); powers of the Court in relation to accused persons suffering mental disorder (Part 9); provisions concerning applications to the Mental Health Review Tribunal; information to be given to patients (Article 78).

Part 3: Procedures for admission

15. Part 3 of the draft Law contains a number of provisions concerning the admission and detention of patients in an approved establishment. These include the admission to and detention of a patient for assessment or treatment (Articles 20–22), the emergency admission and detention of patients (Article 15), and detention by a registered nurse (Article 17). From an ECHR perspective, the emergency detention power in Article 15 and nurses holding power in Article 17 are compatible with Article 5 ECHR because the full

[6] Storck v Germany (2006) 43 EHRR 6 at [74].

procedural safeguards required under Article 5 of the ECHR are not required in emergency situations of this nature and where the detention might be for a negligible period.

16. However, the exercise of the powers afforded by Articles 20–22 of the draft Law will often, applying the criteria in Storck, amount to a deprivation of liberty for the purposes of Article 5(1) ECHR. The first component element of a deprivation of liberty under Article 5 ECHR is the confinement of a person in a restricted space for a non-negligible period of time. The power to detain a patient under these Articles of the draft Law clearly satisfies this element. Moreover, the detention provisions may be applied for periods that would exceed the non-negligible threshold in Storck (e.g. 28 days under Article 21(2)(a); and 6 months, increasing to 12 months on a renewal, under Article 22(2)(a)). The second element in Storck is that the person has not validly consented to the confinement, which will be satisfied because the powers should only be used where the patient is either unable, or unwilling to consent to admission for assessment or treatment.

17. The third element in Storck is that the detention must be imputable to the state which typically occurs through the "direct involvement" of public authorities in the person's detention. Part 3 concerns the detention of persons in approved establishments, which are to be approved by the Minister under Article 5 of the draft Law, but will in practice include the hospital and other approved care homes, whether publicly or privately operated (and regulated under the Regulation of Care (Jersey) Law 2014). It is obvious that detention imposed at the hospital or in a Health and Social Services Department ("HSSD") administered care home, for example, will be imputable to the States of Jersey. It is also possible that some patients will be detained in privately-run establishments. In these cases, the application for compulsory admission of the patient to the private home will be made by an officer authorized by the Minister. Further, the Minister will be responsible for authorizing the compulsory admission. As a result, it is likely that detention may be imputed to the state.

18. Accordingly, arrangements which may be imposed pursuant to Part 3 will amount to a deprivation of liberty under Article 5 ECHR and, as a result, it is important to be able to identify substantive and procedural rules to which the detention must conform. The requirement for 'lawfulness' under Article 5 ECHR will not be satisfied merely by the compliance of the imposition of a detention measure with the provisions in Part 3 of the draft Law. It is imperative that Part 3 itself is in conformity with the ECHR, including the general principles implied in Article 5(1) ECHR case law, namely the principle of rule of law, legal certainty, proportionality and protection against arbitrariness.

19. Legal certainty requires the conditions for a deprivation of liberty under domestic law to be clearly defined, and that the Law itself must be foreseeable in its application so that it meets the standard of 'lawfulness' set by the ECHR. That standard requires all law to be sufficiently precise to allow the person to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. The provisions in Part 3 meet this requirement sufficiently. They set out clearly the circumstances in which a person may be deprived of their liberty, whether by operation of emergency powers or a detention authorization. For example, in the case of compulsory

admissions, Part 3 sets out, among other things, the grounds on which an application can be made (Articles 21 and 22) and the effect of an admission application (Article 20).

20. In terms of protection from arbitrariness, it is imperative that, in the case of the detention of a person of unsound mind pursuant to Article 5(1)(e) ECHR, there is medical evidence establishing that the person's mental state is such as to justify his detention. This condition is satisfied by the requirement for the recommendations of 2 medical practitioners that the grounds for admission in Article 21(1) or 22(1) are met, as part of the application process for admitting patients to approved establishments (Article 18(3)). The requirement that a decision to detain a patient should be based on medical expertise also applies to the renewal of detention. The review of the lawfulness of the continuing detention of a patient of unsound mind should be made by reference to the patient's contemporaneous state of health as evidenced by up-to-date medical assessments, and not by reference to past events at the origin of the initial decision to detain. Under the draft Law, the renewal of a treatment authorization is to be based on examination of the current mental state and risk condition of the patient and a report by the RMO (Article 22(3) and (4)), who is a registered medical practitioner with specialist training in psychiatry (Article 1(1)). For Article 5 ECHR purposes, a report from a registered psychiatrist would satisfy the 'medical expertise' requirement in Winterwerp.

21. Moreover, for a deprivation of liberty not to be arbitrary, there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. Where Article 5(1)(e) ECHR applies, as would be the case in justifying potential arrangements under Part 3 of the draft Law, the detention of a person for reasons relating to his mental health should be effected in a hospital, clinic or other appropriate institution. Under Part 3, patients will be detained in 'approved establishments' which, as noted earlier, will be approved by the Minister but will in practice be places such as the hospital or care homes where care can be provided, and would be regarded as being appropriate institutions for the detention of persons of unsound mind.

22. It is also essential that authorizations for the deprivation of a person's liberty are adequately assessed. In Hillingdon London Borough Council v Neary[7] it was held that the deprivation of liberty assessment in that case was flawed, and that there was, as a result, a breach of the man's Article 5 ECHR right; in that case the wishes of the man in question, and those of his father, had not been taken into account in the relevant assessment. The draft Law provides for a detailed assessment process, part of which expressly provides that the patient's nearest person must be consulted (Article 18(2)(a)(ii)).

23. The requirement that detention not be arbitrary also implies the need for a relationship of proportionality between the ground of detention relied upon and the detention in question. The scope of the proportionality test to be applied in a given case varies depending on the type of detention involved. An individual cannot be deprived of his liberty as being of "unsound mind" unless the mental disorder is of a kind or degree to warrant compulsory confinement. The validity of continued confinement depends upon the persistence of such a disorder[8] (i.e. together with the requirement for medical evidence, the

[7] [2011] 4 All E.R. 584.
[8] See *Winterwerp* (1979–80) 2 E.H.R.R. 387 at [39].

'Winterwerp' criteria). The detention of a person may be 'necessary' where the person needs control and supervision to prevent him, for example, causing harm to himself or other persons.

24. The procedures set out in the draft Law would satisfy requirements for protection against arbitrariness and proportionality, and in turn the Winterwerp criteria. The admission grounds in Articles 21(1) and 22(1) require the patient to be suffering from a mental disorder of a nature or degree that warrants the patient's detention, and also that the patient's detention is necessary in the interests of the patient's health or safety or for the protection of other persons. Accordingly, an application for authorization to detain a patient should only be made, and approved, where the detention is proportionate to the risk posed to, or by, the patient.

Part 3: Discharge of patients

25. In Winterwerp it was held that the lawfulness, in the sense of Article 5(1) ECHR, of continued psychiatric detention under Article 5(1)(e) depends on the persistence of unsoundness of mind of a nature or degree warranting confinement. This means that all those with a power of discharge, particularly the RMO, must keep under review the continued need for detention, and if the criteria for detention are not met, must discharge the patient.

26. Article 27(2) of the draft Law requires the RMO to direct the discharge of a patient unless the patient is suffering from a mental disorder of a nature or degree which warrants continued detention and treatment, and it is necessary for the patient to be detained in the interests of the patient's own health or safety, or for the protection of others. This provision requires the RMO to continually supervise the patient and, if the grounds for detention are no longer met, to discharge the patient.

27. A finding that the mental disorder no longer exists does not then mean that the person must automatically be subject to immediate and unconditional release. Article 27(1) of the draft Law provides flexible provision for the RMO to discharge the patient, having regard to the care and supervision which would be available to the patient if discharged, and this power is compatible with Article 5 ECHR.

28. With regard to powers of the Court, it is considered important from an ECHR perspective that a Court has the power to order a release if it finds that the detention is unlawful; a mere power of recommendation is insufficient. This is accomplished in the draft Law through the powers for the Tribunal to direct the discharge of a patient from compulsory detention (Article 52).

Part 3: Special provisions: patient absent without leave (Article 28)

29. Article 28 of the draft Law provides a power, for patients who are absent without leave from an establishment, to be taken into custody and returned to the establishment. From an ECHR perspective, it is important that where a patient is returned to hospital after an extended period of unauthorized absence, that patient is subject to an up-to-date medical report to determine if he is continuing to suffer from a mental disorder.

30. The procedure for the return of patients in Part 3 of the draft Law is ECHR compliant by virtue of the provisions contained in Article 28(5). That provision applies where a patient returns or is returned to an establishment more than 28 days after the day on which he or she absconded. Where Article 28(5) applies, an approved practitioner is required to examine the

patient to determine if the patient appears to be suffering from a mental disorder of a nature or degree which warrants detention. The effect of this is to ensure that, in the case of those patients returning to detention after a relatively long period away, there continues to be a medical basis, determined with reference to up to date assessments, for the deprivation of their liberty.

Part 3: Review of authorizations

31. Article 5(4) ECHR requires that a patient has the right to take proceedings to challenge the lawfulness of detention before a competent court, which must be independent from the executive and the parties to the case and must involve a judicial procedure. There must be periodic opportunities to apply for a review, provided soon after the relevant decision is made. The resulting proceedings must be taken speedily, and the speediness requirement in Article 5(4) ECHR applies to appellate instances as well as the initial review. A system of periodic review in which the initiative lies solely with the authorities is not sufficient on its own.

32. The scope of review before a tribunal or court must be able to consider whether, on the facts, the Winterwerp criteria for lawful detention are still met. The scope of review must be able to determine whether, in the case of the detention of a mental patient, the reasons which initially justified the detention continue thereafter to subsist. The reviewing authority must also have the power to discharge the patient if the detention is not lawful. The review of the lawfulness of detention must be carried out in light, not only of domestic law requirements, but also of the text of the ECHR, the general principles embodied therein (including proportionality) and the aim of the restrictions permitted by Article 5(1)(e).

33. Under the draft Law, a decision or exercise of a power specified in Part 2 of the Schedule (which includes authorizations to detain a patient) may be made to the Tribunal, and decisions of the Tribunal may be appealed on a point of law to the Royal Court (Article 54). The Tribunal is a competent court and is independent from the state for Article 5 ECHR purposes. The scope of review required under Article 5 ECHR is shared between the Tribunal and the Royal Court: the Tribunal reviews the current need for detention (Article 52), and the Royal Court has the jurisdiction to review the lawfulness of the Tribunals decision and, by extension, the lawfulness of continued detention (Article 54). The Tribunal has the power to direct the discharge of the patient (Article 52) and, on appeal, the Royal Court may, where relevant, quash the decision of the Tribunal and give any direction which the Tribunal has the power to give, including discharge (Article 54).

34. The manner in which proceedings before the Tribunal is to be handled is to be set out in Orders made pursuant to Part 1, paragraph 5 of the Schedule to the draft Law. The matters to be prescribed include the period within which proceedings of the Tribunal may be instituted and the maximum period which may elapse, following the receipt of an application or reference by the Tribunal until the commencement of proceedings. These procedural details will be important from an Article 5(4) ECHR perspective and will ensure that proceedings can be determined speedily. The draft Law limits applications to the Tribunal to one during each of the periods specified in the table in the Schedule (Schedule, Part 2, paragraph 2) which is in the interests of filtering out frivolous applications and is a reasonable condition on applications, given the permitted maximum length of each authorization.

35. Under the draft Law this is addressed by Article 52, which requires the Tribunal to discharge the patient unless it is satisfied that there is a detainable mental disorder, the burden of proof for establishing that fact being with the detaining authority. This is important from an Article 5(4) ECHR perspective. It is also important for Article 5(4) ECHR purposes for there to be congruence between the criteria for admission and discharge. The grounds in the draft Law for the admission of patients (Articles 21(1) and 22(1)) and for a guardianship authorization (Article 29(3)) are the same as the respective grounds for discharge in Article 52.

36. The scope for reviewing decisions and the exercise of powers in Part 7 and the Schedule before the Tribunal, and on appeal to the Court, are also relevant in the context of the positive duty, established by ECtHR case law, on public authorities to ensure that a person deprived of liberty is not only entitled, but enabled, to have the lawfulness of their detention reviewed speedily by a court. These provisions are sufficient to satisfy the States' positive obligations under Article 5(4) ECHR.

37. Another important aspect of the provisions surrounding the review of authorizations for detention is the power for the Attorney General or the Minister to refer a patient's case to the Tribunal (Article 51). This provision is important because it provides an additional Article 5(4) ECHR safeguard by ensuring that, where the patient lacks the capacity to make an application, there is another means by which the patient's case can be referred, in addition to the powers of the patient's nearest person in this regard.

Part 3: Voluntary admissions: Informal admission of older children (Article 14)

38. The continuation of a parent's right to give or refuse consent to any particular medical treatment in the face of the refusal of a competent child is considered difficult to reconcile with the child's rights under Article 5 (and under Article 8) ECHR. The European Court of Human Rights has held that a child's rights under these articles of the ECHR are not extinguished by the existence of parental responsibility. The draft Law addresses this issue of ensuring the protection of a young person's Articles 5 and 8 ECHR rights through Article 14(2) and (3). These provisions enable the admission of older children (i.e. a child aged over 16) to an approved establishment. Article 14(2) provides that arrangements for the admission of such an older child, who has capacity to consent, may be made, carried out and determined on the basis of that consent, even though there is someone who has parental responsibility for that child. Article 14(3) provides that arrangements may not be made, carried out and determined, where a child aged 16 or older has capacity but refuses consent, on the basis of consent of some other person with parental responsibility.

Guardianship (Part 4)

39. Part 4 of the draft Law contains various provisions concerning guardianship; in particular, the effect of an application for guardianship (Article 30) and powers of re-taking into custody (Article 31). From an Article 5 ECHR perspective, much of the analysis of Part 3 of the draft Law above applies with respect to the guardianship provisions in Part 4. Firstly, while the effect of guardianship (as described in Article 30) does not provide explicit authority for the guardian to detain the patient, the powers available to the guardian, such as requiring the patient to reside at a specified place (Article 30(2)(a), 30(5)(a)(i)) and the ability to take and convey, or return a person to such a

place (Article 31), could have such an effect and therefore engage Article 5. The use of these powers could amount to a confinement in a particular place, applied without the consent of the patient and pursuant to a decision which would be imputable to the state, therefore satisfying the Storck criteria for a deprivation of liberty under Article 5 ECHR.

40. A number of substantive and procedural safeguards apply under Part 4, which mean that even if the exercise of the powers of a guardian amount to a deprivation of liberty, that should be compatible with Article 5 ECHR. In particular, the provisions of Part 4 are sufficiently precise to meet the lawfulness requirement in Article 5 ECHR. Article 29 provides clearly the circumstances in which an application for guardianship can be made, including the grounds (Article 29(3)) and the relevant parties to an application. There is also a requirement for an application for guardianship to be accompanied by recommendations of 2 medical practitioners (Article 29(4)), satisfying the requirement that detentions engaging Article 5(1)(e) ECHR are based on medical evidence. Moreover, the guardianship application will be of no effect unless it is received by the Minister within the period of 7 days beginning with the date on which the patient was last examined by a registered medical practitioner (Article 29(6)). This requirement ensures that the decision to impose a guardianship order is based on up-to-date medical evidence. In addition, guardianship must only be imposed where the nature and degree of the patient's mental disorder mean that it is necessary to impose guardianship in the interests of the patient's welfare.

41. Patients subject to guardianship are also entitled to take proceedings for the review of the lawfulness of a guardianship authorization (Schedule, Part 2), thereby satisfying the review requirement in Article 5(4) ECHR. The application may be made as soon as the authorization is issued, enabling a patient to make a request of his or her own initiative in an expeditious manner. As with compulsory detention authorizations, the Tribunal has sufficient powers to secure a cessation of the patient's deprivation of liberty, having the power to order the discharge of a patient from guardianship (Article 52(3)).

Power to remove a person to, and detain in, a place of safety (Part 5)

42. Part 5 of the draft Law contains a number of provisions that would permit the detention of a person. Article 35 provides that a person may be removed to a place of safety pursuant to a warrant; Article 36 provides a power to remove a person to a place of safety who appears to be suffering from a mental disorder and in immediate need of care or control; and Article 37 provides a power for the re-taking of persons into custody.

43. The taking of persons into custody pursuant to the powers in Part 5 will engage Article 5 ECHR. The power in Article 36 of the draft Law applies where the person appears "to be in immediate need of care or control" and the power in Article 35 of the draft Law applies where there is reasonable cause to believe there is ill-treatment, neglect or other risk to a mentally disordered person. In each case, persons taken into custody may be held for a period not exceeding 72 hours (Articles 35(8) and 36(3)). As these powers apply in cases where someone is in immediate or, what might be argued to be, a pressing need of care or control and lasts for a relatively brief period, it is clearly an emergency measure which complies with Article 5(1)(e) ECHR. Accordingly, the requirement for wider Article 5 ECHR safeguards, such as medical evidence and a right of appeal, do not apply.

44. In Winterwerp it was held that "except in emergency cases", an individual should not be deprived of his liberty unless he has been reliably shown to be of "unsound mind". It has, however, been held subsequently that it cannot be inferred from the Winterwerp judgment that a medical report on the patient must in all conceivable cases be obtained before rather than after the confinement of a person on the ground of unreasonableness of mind. Accordingly, a medical assessment should take place promptly after the person's arrival at the place of safety. This is covered by the powers in Articles 35 and 36, which, although they may be exercised prior to a medical assessment being performed, are to be exercised ultimately to enable a person to be medically assessed for an admission application (Articles 35(3) and 36(3)). Indeed, where necessary, an assessment can be carried out in the place of safety or in any other premises (Article 35(4)).

45. Article 34(1) of the draft Law provides that a place of safety includes, amongst other places, a police station. The use of a police station as a place of safety for limited periods in emergency situations is compatible with Article 5 ECHR.

46. Finally, the Article 35 power to enter and search premises is also important in the context of positive obligations arising pursuant to Article 5 ECHR. Those positive obligations will include the duty to investigate, so as to determine whether there is, in fact, a deprivation of liberty. Under Article 35, an authorized officer may enter and search premises to determine whether a person believed to be suffering from mental disorder has been or is being, amongst other things, kept in any place otherwise than under detention or custody as provided by the Law. This provision will enable HSSD to meet its positive obligation under Article 5 ECHR in this regard.

Powers of the court in relation to accused persons suffering mental disorder (Part 9)

47. Part 9 of the draft Law contains provisions pursuant to which the Court may impose a variety of orders or restrictions on a mentally disordered defendant, such as a treatment order, the imposition of which will have the effect of depriving the defendant of his liberty. From an Article 5 ECHR perspective, a period of detention is, in principle, 'lawful' if it is based on a court order. Part 9 includes many of the relevant Article 5 ECHR safeguards identified above. The grounds and process by which a defendant may be deprived of his liberty pursuant to Part 9 are clear from its provisions, thereby satisfying the lawfulness condition. Moreover, the proportionality requirement is satisfied by the fact that the various orders at the Court's disposal may only be imposed if there is reason to suspect that the defendant is suffering from a mental disorder of a nature or degree that warrants admission to and detention in an approved establishment (see, for example, Article 65(2) treatment order, Article 69(2) transfer order). It is also particularly important for the judicial authorities to state the grounds for authorizing a detention for a prolonged period of time, and the Court must give its opinion as to the grounds for detention in imposing orders. Part 9 also includes a requirement for the Court to have regard to medical evidence (for example, medical recommendations of 2 practitioners (Article 65(1)(a))) which is a safeguard against arbitrary exercise of the disposal powers.

48. Where the exercise of the powers in Part 9 will result in the defendant being transferred to an approved establishment, it will be important for those transfer arrangements to be put in place expeditiously. Part 9 of the draft Law requires the defendant's arrangements to be dealt with expeditiously; for example, where a treatment order is made, the defendant must be conveyed to the specified approved establishment within the period of 7 days beginning with the date of the order (Article 65(3)(a)).

49. Finally, features regarding human rights compatibility affecting 2 specific provisions should be noted. The first concerns Article 68 of the draft Law, which permits the Court to direct that a treatment order shall take effect only with special restrictions; for example, restricting the patient's discharge or leave of absence from an approved establishment. These orders, a 'restriction order', can only be made where it is necessary to do so to protect the Public from serious harm. From an ECHR perspective, it is important to note that Article 5 does not include a 'treatability' criterion, so it may be appropriate to detain a mentally disordered patient for purposes of control and supervision rather than medical treatment, to avoid danger to himself or others. Accordingly, proportionate restrictions on discharge or leave of absence, for example, would be compatible from an ECHR perspective given the aim of protecting the public from harm.

50. Secondly, Article 69 of the draft Law provides that a person detained in prison may be transferred to an approved establishment where the Court is satisfied on medical evidence that the person should be so transferred and detained in the Public interest. If that person's sentence of imprisonment has not expired, and in the opinion of the RMO it is no longer necessary for the prisoner to be detained in an approved establishment, the patient, or the Attorney General, may apply to have that person returned to prison. From an Article 5 ECHR perspective, it is important that the detention of a person of unsound mind is only "effected in a hospital, clinic or other appropriate institution", and the power in Article 69 of the draft Law for a prisoner to be transferred to an approved establishment for treatment, and the application process for his or her return to prison if detention in an approved establishment is no longer necessary, satisfies the Article 5 ECHR requirement for ensuring that a person of unsound mind is detained in an appropriate place.

Information to be given to detained patients (Article 78)

51. Article 5(2) ECHR requires that anyone detained should be "informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him". This requirement applies to detention on any ground, including the compulsory detention of a mental patient. The purpose of the obligation to give reasons is to enable the detained person to apply to a court to challenge the lawfulness of the detention in accordance with Article 5(4) ECHR.

52. The Article 5(2) ECHR requirement is fulfilled by Article 78(1) of the draft Law, which provides for an obligation on the managers of an approved establishment in which a patient is detained under the Law to, as soon as practicable after the detention commences, take all steps as are reasonable to ensure that the patient understands under which of the provisions of the Law the patient is detained, and the effect of those provisions. The information must be given within a sufficient period following the commencement of the detention, and the extent of the information required will depend on the circumstances.

Article 6 ECHR – Right to a fair trial

53. Article 6 ECHR provides for the right to a fair trial, and elements of that right are engaged by the following provisions in the draft Law: principal functions of the Tribunal (Article 50) and appeals from Tribunal (Article 54); provision for the protection of persons for acts done in pursuance of the Law (Article 93); criminal justice: incapacity of defendant (Part 8).

Principal functions of the Tribunal (Article 50) and Appeals from Tribunal (Article 54)

54. Article 50 of the draft Law, read in conjunction with Part 2 of the Schedule, provides for a right to apply to the Tribunal for a review of a decision or the exercise of a power directly affecting a patient; for example, issuing a detention or treatment authorization or and authorization of guardianship. The powers of the Tribunal are set out in Article 52, and include the power to order the discharge of a patient detained under an assessment or a treatment authorization. Article 54 of the draft Law provides a right of appeal to the Court on a point of law for a person aggrieved by a decision of the Tribunal.

55. Article 6(1) ECHR requires that those who face a determination of their civil rights and obligations must be entitled to a fair and public hearing by an independent and impartial tribunal. The guarantees afforded by Article 6 ECHR will only be relevant to the extent that an act or a decision is determinative of a 'civil right' or 'obligation'. The matters to be considered by the Tribunal under Part 2 to the Schedule and, in turn where necessary, by the Court under Article 54, relate in most cases to determining in effect whether arrangements which deprive a person of his or her liberty should continue. Article 6 ECHR is applicable to matters relating to the right to liberty so the decisions of the Tribunal and the Court will be determinative a person's civil rights for the purposes of Article 6(1) ECHR.

56. Article 6(1) ECHR imposes a number of procedural guarantees, in particular that civil rights be determined by an 'independent and impartial tribunal'. The independence in question here is independence from the executive, the parties and the legislature. Access to an independent and impartial tribunal may be granted in 2 ways: either the decision-making body itself, e.g. the Tribunal, complies with the requirement of Article 6(1) ECHR, or the decision-making body is subject to control by a body which complies with the requirements of Article 6(1) ECHR and which has full jurisdiction. In effect, it is possible for decisions that affect civil rights to be made by bodies that do not provide all the guarantees of Article 6 ECHR, provided there is a right of review or appeal sufficient to render the proceedings as a whole compatible with Article 6 ECHR.

57. There are a number of features of an 'independent and impartial tribunal' which have been set out in case law, and a number of these features can be assessed against provisions relating to the establishment and constitution of the Tribunal which will be governed by Part 7 of, and the Schedule to, the draft Law. Specifically, these features are the manner of appointment of the members of the Tribunal, the terms of their appointment, the existence of guarantees against outside pressures, and a general appearance of independence. Independence does not need to be guarded by statute, but should be assessed on the basis of all the facts that are publicly known.

58. The appointment of a tribunal by the executive or the legislature is permissible from an Article 6 ECHR perspective, provided the appointees are free from influence or pressure when carrying out their adjudicatory role. The Bailiff will be responsible for appointing the Mental Health Review Tribunal Panel from which the members of the Tribunal shall be drawn (Article 47(1)) and, in this regard, the Bailiff, a senior judicial officeholder, is independent of the executive and the legislature from an Article 6 ECHR perspective. Moreover, Article 47(2) of the draft Law provides that the Panel shall consist of 'qualified persons', and Article 47(4) of the draft Law defines which persons shall be 'disqualified' for those purposes. There are varying disqualifications depending on whether the person is to be a legal, medical or lay member of the Panel (e.g. being a person holding a paid office under the Crown or the States or any employee of the Crown or States employee), and this will ensure the independence for the Panel. Lastly, in most cases it will be the Chairman or Vice-Chairman of the Panel who will be responsible for selecting the Tribunal members (Schedule, Part 1, paragraph 1 of the draft Law), and the Chairman and Vice-Chairman will be appointed from among the legal members (Article 49(1) of the draft Law), the class of 'qualified persons' whose ranks are the most insulated from any perceived executive or judicial influence (by virtue of Article 47(4)(b)(i) of the draft Law).

59. Another feature of independence from an Article 6 ECHR perspective centres on the term of office of tribunal members and possibility of removal. A tribunal with members having no specified term of office and who can be removed at the whim of the executive, will not meet the requirements of independence. In addition, it is necessary to have a sufficiently long term of office. These features are satisfied in the context of the draft Law: Panel members will be appointed for 5-year terms (Article 48(3)(b) of the draft Law), subject to that appointment ceasing on one of the grounds specified in Article 48(3) of the draft Law, e.g. bankruptcy, age. Moreover, Article 48(2) of the draft Law sets out specific, and limited, grounds for the removal of Panel members, i.e. misconduct and physical or mental incapacity. In terms of the remaining Article 6 ECHR features, the existence of guarantees against outside pressure will stem from the procedural rules which will be implemented under the Order-making power in the Schedule, Part 1, paragraph 5 of the draft Law, and the fact that there is an express requirement to declare conflicts of interest guards against undue influence on Tribunal members.

60. An additional procedural aspect of Part 7 of the draft Law which further guarantees compatibility with Article 6 ECHR is the right of appeal to the Court on a point of law. This review scope will enable the Court to exercise, in this context, the requisite sufficient jurisdiction that provides Article 6 ECHR guarantees. Moreover, the Court has the ability to quash the impugned decision or to remit the case for a new decision through the determinative powers set out in Article 54(3) of the draft Law, e.g. quashing the Tribunal's decision, giving any direction which the Tribunal has the power to give, referring the matter back to the Tribunal for reconsideration.

61. Finally, with regard to the provisions for reviewing decisions, it is important for the purposes of Article 6 ECHR that the review is heard within a reasonable time. Applications can be made to the Tribunal under the draft Law immediately following the decision in question (Schedule, Part 2, paragraph 1(1)(a)) and within the periods specified in the third column in the table appearing in Schedule, Part 2 of the draft Law.

Provision for the protection of persons for acts done in pursuance of the Law (Article 93)

62. Article 93 of the draft Law provides that no liability will be incurred by any person in respect of anything done in the discharge of a function conferred by or under the Law, unless, amongst other things, the thing was done in bad faith or without due and reasonable care.

63. The right of access to a court is not absolute, however, but may be subject to limitations. In order to comply with the requirements of Article 6 ECHR, a restriction on access to court must pursue a legitimate aim, and comply with the principles of proportionality and legal certainty. It is established that certain restrictions on the ability of a patient to bring proceedings against hospital staff were compatible with Article 6 ECHR; for example, where the claim alleged bad faith or lack of reasonable care. Such a restriction is considered proportionate to the aim of protecting staff from vexatious and time-consuming litigation, whilst ensuring that justifiable claims were permitted to proceed to a hearing on the merits. Article 93 of the draft Law, which permits claims where there is bad faith or an absence of due and reasonable care, would for these reasons be considered compatible with Article 6 ECHR.

Criminal justice: Incapacity of defendant (Part 8)

64. Article 6 ECHR jurisprudence has established that an accused in criminal proceedings has a right of 'effective participation'; that is, the accused must be enabled to take an active role in those proceedings as opposed to having merely a passive comprehension of the proceedings. This is addressed in Part 8 of the draft Law, which provides for the powers of the court in dealing with mentally disordered defendants. Where it appears to the court that a defendant is incapable of participating effectively in proceedings, Article 56 enables the court to adjourn proceedings to enable determination of the issue of the defendant's incapacity and, where it is determined that a defendant is incapable of participating effectively, the court may remand the defendant on bail or to an approved establishment in order for a report on the defendant's mental condition to be prepared, or remand the defendant to an approved establishment for treatment (Article 58). These provisions operate to ensure that the courts have the power to properly determine a defendant's capacity to stand trial, thereby addressing the Article 6 ECHR requirement that a defendant should be able to participate in proceedings effectively. Moreover, the legal test set out in Article 57 for determining whether the defendant is capable of participating effectively is comprehensive for Article 6 ECHR purposes, and is reinforced by a requirement for medical expertise to support the determination of the defendant's capacity (Article 57(3)). Article 57(4) provides a requirement to put in place special measures if they would alleviate the defendant's apparent incapacity to participate, and this provision further supports the compatibility of the Part 8 proceedings with Article 6 ECHR.

Article 8 – Right to private life

65. Article 8 ECHR is engaged by numerous provisions in the draft Law: nearest person (Part 2); leave of absence from approved establishment (Article 24); guardianship (Part 4); entry and search of premises for the purposes of removing a person to a place of safety (Article 35); consent to treatment (Part 6); transfer orders (Article 69); restrictions on access to electronic media and communications (Article 82); restrictions on postal correspondence (Article 83); removal of an alien patient (Article 88).

Consent to treatment (Part 6)

66. Part 6 of the draft Law contains a number of provisions that would permit the examination and treatment of a patient without their consent. Article 39 permits the treatment of a patient without consent where the treatment is not of a type listed in Article 40(2) or 41(2) (e.g. electro-convulsive therapy, a surgical operation for destroying brain tissue) and the treatment is given under the direction of the patient's RMO. Article 44 permits emergency treatment where, amongst other things, it is immediately necessary to save a patient's life. Article 41 permits, in certain cases, the administration of medicine and certain prescribed treatments to a patient without their consent but where a SOAD has given a certificate in writing. Article 45 enables an approved practitioner or a SOAD to examine patients for the purpose of exercising functions under Part 6.

67. Article 8 ECHR protects the right to respect for private life, which includes the right to physical integrity. The right to decide whether to undergo medical treatment is an aspect of the right to respect for private life, and even minor medical treatment against a patient's will is regarded as an interference. It is established that, while it is for the medical authorities to decide whether to administer treatment in order to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves, forced treatment would constitute an interference with Article 8 ECHR and must therefore be justified under Article 8(2) ECHR. It has also been held that it is important that the domestic law provide some protection to the individual against arbitrary interference with his or her rights under Article 8 ECHR. From an Article 8(2) ECHR perspective, use of the treatment without consent provisions in the draft Law can be justified as serving the legitimate aim of protecting health and the rights of others. Administering treatment without consent can in principle be proportionate to meet that aim where the treatment alleviates or prevents the deterioration of a condition, but proportionality is something that must be evaluated in the individual circumstances of each case.

68. In terms of safeguards against arbitrariness, there are a number of these features in Part 6. Treatment not requiring patient consent can only be given under the direction of the patient's RMO and, where the proposed treatment is invasive, surgical or involves electro-convulsive therapy, it can only be given with both the consent of the patient and a certificate in writing from a SOAD (Article 40(1)). The provision of that SOAD certificate requires, in turn, the SOAD to consult the patient's RMO and one other suitably qualified person (e.g. a mental health professional or an authorized officer). Moreover, in cases under Article 41 where treatment may be given without the consent of the patient but with a SOAD certificate, that certificate must state that the treatment should be given having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition (Article 41(5)). These procedural features prevent the automatic

administration of treatment where a patient does not consent, and restricts the extent of the decisions which the treating doctors can take, thereby guarding against the arbitrary application of the Part 6 powers.

69. Restrictions on access to electronic media and communications (Article 82) and Restrictions on postal correspondence (Article 83).

70. The draft Law contains a number of provisions which would allow the managers of an approved establishment to control a patient's correspondence and other communications. Article 82 of the draft Law provides that access by a patient to electronic media or communications, or to a telephone may be restricted if, in the opinion of the managers of an approved establishment, it is necessary to do so in the interests of the health or safety of the patient or for the protection of other persons. Article 83 of the draft Law provides that postal packets addressed to or addressed by a patient detained in an approved establishment may be withheld from delivery or dispatch if, in the opinion of the managers of that establishment it is necessary to do so because, amongst other things, it is in the interests of the health or safety of the patient or because the dispatch of a package by a patient would be likely to cause distress to the addressee.

71. Article 8 ECHR expressly protects the right to correspondence. In the context of Article 82 of the draft Law, it is also noted that Article 8(1) ECHR incorporates the right to communicate in the first place so a restriction on access to means of communication will engage the right to privacy. With regard to Article 83 of the draft Law, the Article 8(1) ECHR right is noted to encapsulate the confidentiality of private communications and the right to communicate without interception or screening by a third party. Any interference with an individual's correspondence is a serious breach of privacy and is only permitted in very specific situations. It is necessary for any law permitting such an interference to indicate with reasonable clarity the scope and manner of the exercise of the relevant discretion conferred on the public authorities.

72. Control over communications and correspondence is not of itself incompatible with the ECHR insofar as it is consistent with the ordinary and reasonable requirements of detention. However, the grounds for censorship of a detainee's correspondence must be sufficiently defined so as to protect individual detainees from arbitrary or abusive interference in their relations with others. In Article 82, the grounds on which the delivery and receipt of postal packets may be controlled (e.g. in the interests of the health or safety of the patient), and the exemptions from the application of the withholding power (e.g. so as not to apply to correspondence with the Attorney General, the Tribunal, etc.), are clearly specified. Moreover, where any restriction is imposed, there is a requirement for written notice of the restriction to be given. These features delineate the extent of the power in a manner which is compatible with the ECHR.

73. With regard to Article 83 of the draft Law, the state must justify the interception of each item of correspondence in accordance with the conditions laid down in Article 8(2) ECHR, including the requirement that the interception be carried out "in accordance with law". Article 83 of the draft Law clearly sets out the grounds on which a postal packet may be withheld (Article 83(1) and (2)), and the scope of the application of the power is marked out by reference to a number of exempted persons (e.g. the patient's

legal representatives). Article 8(2) ECHR provides that an interference with the Article 8(1) ECHR right is permitted where it is in the interests of, amongst other things, the prevention of crime and the protection of morals or the rights and freedoms of others. The grounds stated in Article 83(1) and (2), i.e. the health or safety of the patient, the protection of other persons, and a concern for the addressee's distress and danger to any person, would each fall squarely within Article 8(2) ECHR. An interference with a patient's right to correspondence on these grounds would be justified from an ECHR perspective, so long as the power to inspect is exercised in a proportionate manner in practice.

74. The opening and inspection of postal packets, as provided for in Article 83(4), will amount to a clear interference with the right to correspondence. Again, this power is permitted for clear purposes, namely determining whether or not Article 83(1) or (2) may apply and "for no other purpose", and those grounds are within the Article 8(2) ECHR grounds for interference with the Article 8(1) ECHR right. That interference will be justified if the power is exercised in a proportionate manner.

Entry and search of premises for the purposes of removing a person to a place of safety (Article 35)

75. Article 35 of the draft Law provides a power for the Bailiff to issue a warrant authorizing an authorized officer to enter, if necessary by force, any premises specified in the warrant for the purposes of searching for and, if necessary, removing a person being ill-treated, neglected or who is otherwise unable to care for himself or herself.

76. Use of this power may involve an interference with the mentally disordered person's home and private life, or that of any other person whose premises a mentally disordered person is in, and must be justified under Article 8(2) ECHR. In terms of justifying that interference, the purpose for exercising the power clearly falls within the protection of health exception in Article 8(2) ECHR. Entry to the person's home must be a proportionate measure in all the circumstances, and the reasons adduced to justify the search must be relevant and sufficient. The governing legislation and practice must also afford adequate and effective safeguards against abuse if the test of proportionality is to be satisfied.

77. With regard to proportionality, and striking a fair balance, the necessity for entering onto premises to search for persons who may be at risk presents a persuasive rationale for interference with the Article 8 ECHR right. There are a number of other features in Article 35 that assist in mitigating any interference, the most important of which is the requirement for a warrant (Article 35(2)), which introduces a sufficient degree of judicial supervision to the exercise of the power. That warrant must be issued in specific terms as to the premises against which the power is to be exercised, which should restrict scope for excessive use of the warrant. An additional safeguard is the requirement for an authorized officer to be accompanied by a registered medical practitioner in every case and, where necessary, a Police Officer, ensuring that the relevant aspect of the entry power, in terms of medical assessment, and force, where necessary, is conducted by the appropriate person. The rationale behind Article 35 of the draft Law, coupled with these safeguards, will ensure that the Article 35 power is compatible with the ECHR in principle.

Nearest Person (Part 2)

78. Part 2 of the draft Law provides for the determination of a patient's 'nearest person', and includes provision for their nomination by the patient and their appointment by the Minister. A 'nearest person' will have various rights and responsibilities conferred under the Law and, in particular, may receive information as to the patient's care or treatment and may make representations to the RMO about proposals in that regard (Article 13).

79. Information relating to a patient's mental condition is part of that person's private life, and the disclosure of such information to the 'nearest person' constitutes an interference with the patient's Article 8 ECHR right, unless that interference is justified under Article 8(2) ECHR. Allowing the nearest person an unfettered and unchecked right to sensitive information of this nature could amount to an interference with the right to respect for private life under Article 8(1) EHCR.

80. However, a number of safeguards apply in respect to the right of the nearest person to receive information. The draft Law provides a number of means by which the patient may remove a person as nearest person, thereby addressing some of these Article 8 ECHR concerns. Where the nearest person is appointed by the Minister under Article 10(2), the patient may by written notice revoke that appointment (Article 10(3)(b)). Where a nearest person is appointed by the Court under Article 11(1), a patient, in addition to that patient's nearest relative, may apply to the Court for the discharge of the order appointing the nearest person (Article 12(1)).

81. In addition to ability to discharge the nearest person, under Article 13(3) the RMO may also withhold information from the nearest person where either the patient does not consent to disclosure, or the patient lacks capacity to consent and it is not in the best interest of the patient to disclose, or would be likely to cause the patient or any other person serious harm.

Guardianship (Part 4)

82. Part 4 of the draft Law provides for applications for guardianship, the effect of guardianship and the powers of the guardian and the Minister in that regard. As the patient's guardian is likely to exercise powers, including making decisions on behalf of the patient, which will involve an interference with the patient's right to respect for private and family life under Article 8(1) ECHR, a justification for the interference, which must be a proportionate response to the identified risk, will need to be found in Article 8(2). The exercise of guardianship provisions would come within the protection of health and the rights of others exceptions in Article 8(2) ECHR. In order to justify the proportionality of the powers in Part 4, in practice, the guardian must have identified and assessed the potential effectiveness of alternatives to the use of that power.

Leave of absence from approved establishment (Article 24)

83. Article 24 of the draft Law provides for the grant of leave of absence to patients who are liable to be detained in an approved establishment. In particular, there is a power to grant leave subject to such terms and conditions as the RMO may consider necessary in the interests of the patient and the protection of other persons, or as the Minister may prescribe (Article 24(2)).

84. It has been held that the granting of leave of absence with a condition that a patient accepts medication will not contravene the ECHR if one of the grounds in Article 8(2) ECHR is satisfied. In order to satisfy one of the grounds in Article 8(2) ECHR to justify the violation, the patient must be informed of both the nature of the conditions and the likely consequence of breaching the conditions. Accordingly, in practice it will be important for those imposing any conditions under Article 24(4) which might engage the Article 8 ECHR right, such as requiring medication to be taken, to ensure that the patient is well-informed. Article 66 and codes of practice to be made pursuant to that provision will ensure that this happens in practice.

Transfer orders (Article 69)

85. Article 69 of the draft Law provides that the court may order the transfer of a prisoner from a prison to an approved establishment and the detention of the patient in that establishment (Article 69(1)) and, where a prisoner is discharged from that establishment but his sentence has not expired, that patient must be conveyed back to prison in accordance with directions given by the court (Article 69(9)).

86. The right to private and home life under Article 8 ECHR has been held to be relevant in the case of detainees, and the transfer of patients from one environment to another pursuant to Article 69 of the draft Law will engage Article 8 ECHR. However, in the absence of a breach of another article, the ECHR does not render unlawful the interference with private life which would inevitably follow from a lawfully imposed custodial sentence. Transfer from prison to hospital and back again, as a part of the custodial regime pursuant to criminal law and the draft Law, is compatible with Article 8 ECHR, notwithstanding the differences in medical treatment which may occur as between the hospital and prison. Any differences in regimes between the hospital and prison which amount to an interference with the defendant's private life would comply with Article 8(2) ECHR as a measure in "accordance with the law", pursuing the aims of the preservation of disorder and crime and protection of the rights of others, as well as being necessary in a democratic society for those aims.

Removal of patients from Jersey (Articles 86–88)

87. Articles 85–88 of the draft Law provide powers for the Court and the Minister to remove a patient from Jersey to the British Islands or a country or territory outside the British Islands for the patient's care and treatment there. The removal of a patient under this provision would engage the patient's right to private, family and home life under Article 8 ECHR, and would need to be justified under Article 8(2) ECHR. The transfer would need to be justified on grounds that it is in the best interests of the patient, and that proper arrangements have been made for that patient's admission in the receiving place, and for that patient's care and treatment. The decision to transfer a patient away from Jersey must be made proportionately. Where the Minister decides to authorize the removal of a patient overseas, that authorization must be approved by the Tribunal (Article 85(1)(b)), which will assist in the proportionate application of this power in the draft Law."

Explanatory Note

This draft Law would repeal and substantially re-enact (with appropriate modernisations) the Mental Health (Jersey) Law 1969 and the Criminal Justice (Insane Persons) (Jersey) Law 1964. It would also introduce wholly new provisions for Jersey, relating in particular to the representation and safeguarding of individuals suffering from mental disorder ("patients") in the context of health care and of civil society at large, and to the powers of the court for dealing with such individuals when they appear as defendants in the criminal justice system.

Part 1 of the draft Law deals with the overall administrative framework under which care is to be provided for patients in Jersey. *Article 1* is the interpretation provision for the whole of the draft Law, and in particular newly defines key concepts such as 'mental disorder' (which does not, except in certain specific circumstances, include drug or alcohol dependence) and 'treatment', and also introduces roles not previously codified in statute such as the roles of mental health advocates and responsible medical practitioners (i.e. the psychiatric specialists with responsibility for particular patients).

Article 2 sets out the duties of the Minister for Health and Social Services under this Law. The primary duty is to make provision for care and treatment of patients, and in the exercise of that duty the Minister is particularly required to appoint an administrator, to authorize officers, to approve practitioners, and establishments for the detention and care of patients, and to issue a code of practice. The Minister must also keep and publish a register of such appointments, approvals and authorizations. The Minister has power under *Article 3* to do anything which appears necessary, conducive or expedient to the proper discharge of the primary duty, including in particular doing such things as providing establishments and facilities for the care of patients and providing ancillary or supplementary services for promotion of mental health and prevention of mental disorder.

Articles 4 and 5 deal further with the appointment of an administrator (who must publish an annual report), and with approval of establishments providing an appropriate and adequate standard of treatment. *Article 6* confers power on the Minister to authorize officers with training in and experience in mental health, who will carry out functions under the Law, including in particular making applications for admission of patients into care and treatment or into guardianship.

Part 2 of the Law concerns the role of the 'nearest person' in relation to a patient. *Article 7* provides that it is to be presumed that a patient's nearest relative will be his or her nearest person, unless the patient nominates a person other than the nearest relative under *Article 10*, or a nearest person is appointed by the court under *Article 11* on one of the grounds listed in paragraph (4) of that Article. Those grounds include lack of a nearest relative or the unsuitability of a nearest relative. The rules for determining which family member constitutes the 'nearest relative' of an adult patient are given by *Article 8*, and additional rules are given by *Article 9* for certain patients aged under 18 who fall within one of the cases described in that Article. An adult patient has the right, under *Article 10*, to nominate a person other than the nearest relative and who consents to act as such, as his or her nearest person. The principal rights of a nearest person to receive information as to the patient's care or treatment are stated in *Article 13*.

Part 3 deals with admission to approved establishments, and detention of patients in those establishments for care and treatment generally, under the civil regime for which the Minister has overall responsibility.

There are a number of routes to admission under Part 3. A patient may be admitted of his or her own volition under *Article 14*. A person may be admitted under *Article 15* on emergency grounds for up to 72 hours where, in the opinion of an approved practitioner, it is likely that the person is suffering from mental disorder and their remaining at liberty would endanger the safety either of that person or of others. (An 'approved practitioner' is defined by *Article 16* as one who is approved by the Minister as having sufficient experience and training in the field of mental health and in the operation of mental health legislation.) *Article 17* applies to give nurses powers to detain patients already receiving treatment for up to 6 hours, where the patient's liberty would endanger their own or others' safety and it is not practicable to secure immediate attendance by an approved practitioner.

In any other circumstances, a patient must be admitted by an application being made for the purpose in accordance with *Articles 18 and 19. Article 18* states the general requirements for admission applications, which must be made to the Minister in writing by an authorized officer who has personally seen the patient within the 7 days preceding the application, and (where reasonable practicable) following consultation with the patient's nearest person. An admission application must made on the grounds stated in either *Article 21* (admission for assessment) or *Article 22* (admission for treatment), as the case may be, and must be accompanied by medical recommendations by 2 registered practitioners, one of whom must be an approved practitioner.

Further requirements as to the medical recommendations are set out in *Article 19*, which also contains safeguards to ensure that such recommendations are made independently, and in particular not by relatives of the patient or by persons in receipt of payments for the patient's maintenance.

By *Article 20* an admission application duly made in accordance with these provisions is sufficient authority for the patient to be conveyed to an approved establishment within 72 hours, and detained in that establishment for an initial period of up to a week beginning with the date of admission. Article 20 also requires that a copy of the admission application must be provided to the managers of the approved establishment who, upon confirming that the application appears to be duly completed, must give notice of the admission to the Minister. In response to an application which is duly made, the Minister must confirm that fact to the managers and must authorize the continued detention of the patient for assessment or treatment.

The grounds for admission and detention for assessment as stated in *Article 21* are that the patient appears to be suffering from mental disorder of a nature or degree which warrants detention in an approved establishment, with or without treatment, for at least a limited period, and that such detention is necessary either in the interests of the patient's health or safety or for the protection of other persons. An authorization for assessment may be granted only for a specified period of no longer than 28 days, and may not be renewed.

The grounds for admission and detention for treatment stated in *Article 22* are similar, but the nature or degree of the patient's mental disorder must warrant the detention of the patient for treatment. A patient may be detained under a treatment authorization under this Article for up to 6 months, and during that detention may be provided with any appropriate and lawful treatment. A treatment authorization may be renewed for one additional period of 6 months and thereafter for successive periods of 12 months,

but only if, on each occasion, a review by the responsible medical officer recommends such renewal to the Minister.

If an admission application or any related medical recommendation is not duly made, *Article 23* permits rectification of the defect in question with the consent of the Minister.

The remaining provisions of Part 3 deal with the different circumstances in which a person liable to be detained under that Part may leave or be absent from (whether lawfully or not) the approved establishment. Leave of absence may be granted by the responsible medical officer under *Article 24*, either unconditionally or on conditions (which may be of a kind prescribed by the Minister) and for specified or indefinite periods. The Minister must be notified of the grant of any leave for a specified period exceeding 7 days, and of the length of the period and any conditions imposed. In granting leave the responsible medical officer may direct that, for reasons of the patient's health or safety or for the protection of other persons, the patient must remain in the custody of a member of staff or another authorized person during the leave of absence. Leave of absence may be revoked and the patient recalled at any time, for similar reasons, and there is also power for the responsible medical officer to vary any conditions on which leave is granted.

If a patient is absent without leave being granted under Article 24, or fails to return at the end of such leave or upon being recalled, *Article 25* provides that the patient may be taken into custody and returned to the approved establishment by the managers or any member of staff, or a police officer. If the patient is absent without leave within the week preceding the day on which his or her liability to detention would cease, that liability is continued by special provisions in *Article 28*, until the patient is returned or returns to the approved establishment.

Under *Article 26*, the Minister may make arrangements for transferring a patient from one approved establishment to another, and where such a transfer occurs the admission application and subsequent authorization continue in effect as though made in relation to the establishment to which the patient is transferred.

Article 27 provides for the discharge of a patient by the responsible medical officer once the grounds for continued detention of the patient cease to apply. Notice in writing of the discharge must be given to the patient's nearest person, the Minister, and the managers of the approved establishment, as well as to the patient. Discharge may be requested by the patient's nearest person and if the responsible medical officer declines the request, full reasons for doing so must be given.

Part 4 deals with guardianship and has some procedural features in common with Part 3 (under *Article 29* an application for guardianship must be made to the Minister by an authorized officer in accordance with the requirements in that Article, and be accompanied by medical recommendations of 2 registered medical practitioners, as to which Article 19 applies as though these recommendations related to an application under Part 3). In other respects it provides an alternative to detention under Part 3, for persons who appear to be suffering mental disorder, where it is necessary for them to be under guardianship in the interests of their own welfare or for the protection of others. A guardianship application naming a person other than the Minister as guardian must include evidence of the person's consent to act as guardian in relation to the patient.

Once authorized by the Minister a guardianship application is, under *Article 30*, sufficient authority for the reception of the patient into the guardianship of the person named in it as guardian, and confers power for the guardian to require the patient to reside at a specified place, to attend at specified times and places for treatment,

training, etc., and to require access to the patient to be given to a registered medical practitioner, authorized officer or other specified person. Where the Minister is the guardian, the Minister may require the patient to reside in an approved establishment or to attend a specified training centre.

If a patient who is subject, under the terms of his or her guardianship, to a residence requirement is absent without the guardian's leave from the place at which he or she is required to reside, *Article 31* provides that the patient may be taken into custody and returned to that place by the guardian or a person authorized by the guardian, a police officer or other authorized officer, or by the managers of any approved establishment or a person approved by the managers.

Article 32 deals with transfer of patients between different guardians, and provides for the substitution of a guardian by another if the first becomes incapacitated, and creates a Regulation-making power to make further provision as to the transfer of patients between guardianship and detention in an approved establishment, and vice versa.

By virtue of *Article 33*, a guardianship authorization has effect for 6 months beginning with the date of approval, and may be renewed for one further period of 6 months and subsequent periods of 12 months, following a review by the responsible medical officer recommending such renewal to the Minister.

Part 5 makes provision for certain situations where it may not be clear, but it is suspected, that a person may be suffering mental disorder, and creates a suite of provisions whereby the Bailiff and the police force may legally deal with such persons, including by taking them into custody. *Article 34* defines expressions for the purposes of Part 5, in particular the expression 'place of safety' which in addition to an approved establishment may mean a police station or any other place designated for the purposes of Part 5 by the Minister. *Article 35* confers on authorized officers power to apply to the Bailiff for a warrant to enter and search premises where there is reasonable cause to suspect that a person believed to be suffering mental disorder is being ill-treated, or is living alone but unable to care for himself or herself. A warrant under this Article may authorize the removal of such a person to a place of safety for the purpose either or making an admission application in respect of the person under Part 3, or making other arrangements for the person's care or treatment. Warrants may also be issued under Article 35 for the entry and search of premises for retaking into custody a person reasonably believed to be there, where admission to the premises has been or is likely to be refused. An authorized officer executing a warrant under Article 35 must be accompanied by a registered medical practitioner, and a person removed to a place of safety under these provisions may be detained there for up to 72 hours. The warrant may be issued without identifying the person sought under it.

Powers are conferred on police officers by *Article 36* for more urgent removal, from any place other than a private dwelling, of persons apparently suffering mental disorder and in immediate need of care and control. The maximum period of detention in a place of safety under this Article is also 72 hours.

Article 37 deals with persons who escape from legal custody (including a place of safety), and provides that such persons may lawfully be re-taken into custody by the person from whose custody the escape was made, or by a police officer, authorized officer, the managers of an approved establishment in which an escapee is liable to be detained, or, in a case of guardianship, by any person who would be entitled to take the escapee into custody under Article 31.

The principal provisions of Part 6 apply (by virtue of *Article 38*) to any patient, to create safeguards by requiring consent and a second medical opinion before the administration of certain types of treatment (listed in *Article 40*, these are: surgical

operations for destroying brain tissue, surgical implantation of chemical castration hormones, and electro-convulsive therapy. Other types of treatment may be included, by Order.) Part 6 as a whole applies to any person liable to be detained under the Law, except under Article 15 or 17 in Part 3, or under Part 4 or 5. The effect of this (by *Article 40*) is that certain treatments, including administration of medicine to a detained patient by any means after 3 months have elapsed since the first such administration, may only be given either with the patient's consent or under a certificate in writing given by a second opinion approved doctor (the definition of a SOAD is given in Article 38). For the avoidance of doubt *Article 39* provides that treatments other than those listed in Article 40 or 41 may be given by or under the direction of a responsible medical officer. *Article 42* allows a patient to withdraw consent given to treatment at any time, whether or not the treatment has been completed. *Article 43* provides that the duration of a certificate given by a SOAD under Article 40 or 41 is limited to 6 months, and *Article 45* provides for the form of such certificates and sets out the powers of an approved practitioner or SOAD to examine patients and their records for the purposes of Part 6.

Article 44 disapplies the requirements for consent where treatment is immediately necessary to save a patient's life, is not irreversible or hazardous (as defined in paragraph (3) of that Article) and fulfils certain other conditions. Finally in Part 6, *Article 46* creates a Regulation-making power for the purpose of making further provision as to the application of consent requirements and in particular as to circumstances in which treatment may be administered to a child or to a person incapable of giving consent.

Part 7 establishes a Mental Health Review Tribunal for the purpose, as further set out in *Article 50*, of reviewing certain decisions under this Law. A full list of such decisions, and of the persons who may make applications for review to the Tribunal, is set out in a table in Part 2 of the Schedule, which is given effect by *Article 49*. *Article 47* provides for the appointment by the Bailiff of a panel from which membership of the Tribunal is to be drawn, consisting of qualified persons as defined in that Article (briefly, those with relevant legal or medical qualifications, or lay members experienced in the field of mental health and considered suitable by the Bailiff). However the Bailiff, Deputy Bailiff, other members of the States, States' employees and persons providing services to the States or to a Minister are disqualified. The Minister may pay persons appointed to a panel under this Article and may provide administrative support. The duration of terms of office of members of the panel is provided for by *Article 48* and limited in normal circumstances to 5 years or the occurrence of a member's 72nd birthday, whichever is earliest. Under *Article 49* the Bailiff is obliged to appoint a Chairman, Vice Chairman and the number of members required to discharge the functions of a Tribunal. Article 49 also brings into effect Part 1 of the Schedule, dealing with the detailed constitution and procedures of the Tribunal, and provides that Part 1 may be amended by Regulations. Part 1 includes provisions as to conflicts of interest, and creates an offence of unlawful disclosure of information acquired in the exercise of functions by a panel member, punishable by a fine of unlimited amount.

Article 51 permits references to the Tribunal by the Attorney General or the Minister, in relation to patients liable to be detained under Part 3 or subject to guardianship under Part 4. The Tribunal has power to direct the discharge of a patient unless the Tribunal is satisfied that the continued detention or guardianship is necessary, as provided in *Article 52*. Provision is made by *Article 53* as to examination of, and reports on, a patient by a registered medical practitioner for the purpose of the

application to the Tribunal. *Article 54* enables appeals to be made to the Royal Court from decisions of the Tribunal.

Parts 8 and 9 provide for the powers of the court in dealing with mentally disordered defendants. By *Article 55*, which deals with interpretation and application, Part 8 applies in any proceedings where it appears to the court that a defendant may be incapable of participating effectively in those proceedings, because of mental disorder or inability to communicate. (This Part replaces the Criminal Justice (Insane Persons) (Jersey) Law 1964, which is repealed by *Article 97*.) Under *Article 56*, the court may adjourn the proceedings to enable determination of any issue as to incapacity, and the issue must be determined as soon as possible (unless the court determines that it is both expedient and in the interests of the defendant to postpone determination of the issue). That Article also provides that if the incapacity is due to inability to communicate, which might be alleviated by special measures such as the provision of an interpreter or of mechanical or electronic aids, the court must put such special measures in place. The factors to be taken into account in determining whether or not a defendant is incapable within the meaning of Part 8 are set out in *Article 57*.

On an initial finding of incapacity, *Article 58* provides that the court may make an order such as it has power to make under Part 9 remanding the defendant on bail or to an approved establishment for reports or treatment while the proceedings are stayed, with a view to the defendant's full participation at a later date. However if, on medical evidence, the defendant will foreseeably remain incapable of participating effectively, the court may dispose of the proceedings in accordance with *Article 59*, i.e. by acquitting the defendant or by making an order such as permitted by that Article or as provided by Regulations.

Part 9 applies as provided by *Article 60*, principally to confer a suite of powers for a court to deal with defendants charged with (in the case of Articles 61 to 63) or convicted of (in the case of those Articles, and also of Articles 64 and 65 to 67) an offence punishable by imprisonment, where treatment for a mental disorder would be more appropriate than a prison sentence. Under *Article 61* the court may remand a defendant on bail, and order his or her attendance at an approved establishment, for the purpose of obtaining a report on the defendant's mental condition. Where the court is of the opinion that the defendant would not comply with an Article 61 order, and is satisfied on the evidence of 2 registered medical practitioners that there is reason to suspect that the defendant is suffering from mental disorder, *Article 62* enables the court to remand the defendant to a specified approved establishment for the purpose of obtaining such a report. The court may give directions for the defendant to be conveyed to and detained in the approved establishment (or, pending admission to the establishment, in a place of safety). The defendant may be remanded for 28 days at a time, up to a limit of 26 weeks in total. Article 62 also provides for the defendant's rights to obtain an independent medical report and to apply to the court for the remand to be terminated. *Article 63* gives the court power to remand a defendant to an approved establishment for the purpose of treatment, if, on the evidence of 2 registered medical practitioners, the defendant is suffering mental disorder of a nature or degree which makes such detention appropriate. The defendant may be further remanded in accordance with the same limits as provided for by Article 62.

Where the medical evidence indicates that a treatment order may be warranted, the court may order the admission and detention of the defendant under *Article 64* in order to assess the nature and degree of the defendant's mental disorder and the advisability of making a treatment order in the case. A period of detention of up to 12 weeks may be specified under Article 64, with subsequent renewals of 28 days up to a maximum of 26 weeks in total. Either following detention under Article 64, or where warranted

by the serious nature of the defendant's mental disorder, the nature of the offence and the defendant's character and antecedents, the court may make a treatment order that the defendant be admitted to and detained in an approved establishment under *Article 65*, in lieu of a sentence of imprisonment. Similarly where it is most appropriate having regard to all the circumstances, under *Article 66* the court may order that a defendant be received into guardianship. If, on the other hand, it is appropriate to impose a sentence of imprisonment, but the defendant is suffering mental disorder for which appropriate treatment is available in an approved establishment, the court may direct, under *Article 67*, that the defendant be detained in such an establishment rather than in prison, and may also specify restrictions on discharge of the defendant.

Further restrictions on a treatment order may be imposed, by the Royal Court only, to protect the public from serious harm, in accordance with *Article 68*. A defendant subject to a restriction order is admitted and detained as though under a treatment authorization, but may not be given leave of absence, nor transferred to another establishment, without leave of the Royal Court, and may not be discharged unless and until the Court considers that the restriction order should no longer have effect.

Where a person is already detained in prison, but the evidence of 2 registered medical practitioners shows that the person is suffering from mental disorder such that he or she should be detained in an approved establishment, the Royal Court may order transfer to such an establishment under *Article 69*. The medical evidence must be in writing except in a case of emergency. A prisoner subject to a transfer order may be detained in the approved establishment for 6 months initially, renewable for one further period of 6 months and thereafter for periods of 12 months, unless the sentence of imprisonment expires. The prisoner may be returned to prison if in the opinion of the responsible medical officer, detention in an approved establishment ceases to be necessary.

If a person to whom an admission or guardianship application relates is detained in custody pursuant to an order of the court for a period exceeding 6 months, *Article 70* provides that the application ceases to have effect at the end of that period.

Article 71 deals with committal to the Royal Court of defendants convicted in other courts of offences punishable with imprisonment, where it appears that a restriction order would be appropriate in the case.

Finally in Part 9, *Article 72* (which applies in any proceedings, whether or not the defendant has been convicted, or has been found to be incapable under Part 8) provides that where there is evidence that the defendant committed the alleged act, but at the time of doing so was suffering from mental disorder to such a degree that he or she ought not to be held criminally responsible, the court must record a special verdict to that effect and either acquit the defendant or make a treatment order, a guardianship order or another order such as may be specified by Regulations.

Part 10 creates new offences for the further protection of vulnerable patients. *Article 73* makes it an offence for the managers and staff of an approved establishment to ill-treat or wilfully neglect patients in the establishment, whether detained there or receiving treatment or otherwise in the care or custody of the establishment. It is also an offence under that Article for an individual to ill-treat or neglect a patient subject to his or her guardianship or otherwise in that individual's care or custody. *Article 74* creates an offence of committing certain acts of a sexual nature ("prohibited acts") with, towards or in relation to a person suffering mental disorder who is unable because of that disorder to refuse involvement in such an act. *Article 75* creates similar offences where one person is involved in the care (as further defined by that Article)

of another who suffers from mental disorder; and provides that it is to be presumed, for the purpose of proving an offence under Article 75, that unless the contrary is shown the care-giver knows or could reasonably be expected to know that the person in receipt of care suffers from mental disorder. It is a defence to a charge under Article 75 that the care-giver is lawfully married to, or in civil partnership with, the person in receipt of care. By *Article 76*, it is an offence for a person who knows, or could reasonably be expected to know, that another person suffers from mental disorder, to secure the participation of that other person in a prohibited act. A range of penalties for offences under Part 6 is given by *Article 77*.

Other safeguards are created by Part 11. *Article 78* requires managers of an approved establishment to take all reasonable steps to ensure that a patient in the establishment understands the terms of his or her detention, the rights (of advocacy, representation and review) available under this Law, and the effect of certain of the Law's provisions – in addition to those in Part 10 itself – as to the appointment of representatives, discharge from detention, and consent to treatment. *Article 79* is a power for the States to make Regulations requiring the Minister to make arrangements for the provision of an independent patient advocate service, on behalf of patients who are detained, subject to guardianship, or receiving out-patient treatment for mental disorder. *Article 80* makes it an offence (punishable by up to 2 years' imprisonment, and/or a fine) for a person to forge documents, or to make or use forged documents, in particular admission applications and medical recommendations.

Under *Article 81* the Minister may pay amounts in respect of the occasional personal expenses of patients who would otherwise be without resource to meet such expenses.

Articles 82 and 83 provide for the circumstances in which a patient's access to, respectively, electronic media and postal correspondence may be restricted by the managers of an approved establishment in which the patient is detained. *Article 84* confers a right on the patient (and the addressee of postal correspondence, where notice of a relevant restriction has been given) to apply to the Mental Health Review Tribunal for review of a restriction imposed under either Article 82 or 83.

Part 12 regulates the circumstances in which patients may be transferred between Jersey and other jurisdictions. Generally a patient may not be removed from Jersey except as authorized by order of the court, or in the case of removal to a place without reciprocal arrangements (*Article 87*) or of removal of a patient who is an alien (*Article 88*), by the Minister with the approval of the Tribunal. Under *Article 86* the Minister may authorize removal of a patient from Jersey to another place in the British Isles where it appears that this is in the patient's best interests and there are reciprocal arrangements. *Article 89* provides for the application of the Law to persons brought to Jersey under enactments corresponding to Article 86.

Part 13 makes miscellaneous and general provision for the implementation of the Law. *Article 90* empowers the Minister to issue a code of practice for the guidance of persons carrying out functions under the Law, which must include a statement of principles informing decisions under the Law, addressing specified matters and the weight to be accorded to each of them. Failure to comply with such a code may be taken into account in proceedings for any offence, but does not otherwise or of itself give rise to liability.

Offences of assisting patients to abscond (punishable by up to 2 years' imprisonment and an unlimited fine), and of obstructing authorized persons in carrying out functions under the Law (punishable by up to 3 months' imprisonment and a fine of level 3 on the standard scale), are created by *Articles 91 and 92* respectively.

Article 93 confers protection for acts done in the discharge of functions under the Law, so long as an act is not done in bad faith or negligently. Such protection does not prevent the award of damages under Article 7(1) of the Human Rights (Jersey) Law 2000.

Articles 94, 95 and 96 confer general powers to make, respectively, Regulations, Orders and Rules of Court. *Article 97* repeals the Criminal Justice (Insane Persons) (Jersey) Law 1964 and the Mental Health (Jersey) Law 1969. Article 97 also makes a saving provision to retain in effect the provisions of the latter Law relating to curators, in case the Draft Capacity and Self-Determination (Jersey) Law 201- (P.79/2016) (which would replace the system of curatorship with a new system of appointment of delegates) should not have commenced by the time this Law comes into force.

Article 98 provides for the citation of this Law and for its commencement by Act of the States.

DRAFT MENTAL HEALTH (JERSEY) LAW 201-

Arrangement

Article

Jersey

DRAFT MENTAL HEALTH (JERSEY) LAW 201-

A LAW to make provision as to the care and treatment of persons suffering mental disorder; and as to the treatment, under the criminal justice system, of offenders and other persons who may suffer mental disorder; and for connected purposes

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 –

PART 1

INTERPRETATION, APPLICATION AND OTHER GENERAL PROVISIONS

1 Interpretation

(1) In this Law –

"admission application" means an application under Article 18;

"approved establishment" means an establishment or premises approved by the Minister under Article 5;

"approved practitioner" means a person approved by the Minister under Article 16;

"assessment authorization" has the meaning given by Article 21;

"authorized officer" means a person authorized by the Minister under Article 6;

"Capacity Law" means the Capacity and Self-Determination (Jersey) Law 201-[1];

"child" means a person under the age of 18 years;

"code of practice" means a code of practice issued under Article 90;

"Court", except in Parts 8 and 9, means the Royal Court;

"function" includes, unless the context does not so permit, both a power and a duty;

"learning disability" means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning;

"mental disorder" means, subject to paragraphs (2) and (3), any disorder or disability of the mind;

"MHA" means an independent mental health advocate appointed under Article 79;

"Minister" means the Minister for Health and Social Services;

"nearest relative" –

(a) in relation to certain patients aged under 18, has the meaning given by Article 9;

(b) in relation to all other patients, has the meaning given by Article 8;

"nearest person", in relation to a patient, means the person determined, nominated or appointed as such under Part 2;

"patient", unless otherwise specifically provided, means a person suffering or appearing to be suffering mental disorder, whether or not that person is undergoing treatment at the time of the application of a particular provision of this Law;

"prescribed" means prescribed by an Order made by the Minister under Article 95;

"registered medical practitioner" means a person registered as a medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960[2];

"responsible medical officer" means a registered medical practitioner with specialist training in psychiatry who is –

(a) in relation to a patient liable to be detained under Part 3, the registered medical practitioner with overall responsibility for the treatment of that patient;

(b) in relation to a patient subject to guardianship under Part 4, any registered medical practitioner authorized by the Minister to act, either generally or in any particular case, as the responsible medical officer;

"SOAD" has the meaning given by Article 38(3);

"treatment", unless otherwise specifically provided, means any treatment for mental disorder, and includes (but without limitation) –

(a) psychiatric or physical treatment or nursing;

(b) medication;

(c) cognitive, behavioural or other therapy;

(d) counselling or other psychological intervention;

(e) training or other rehabilitation;

whether or not provided on a regular basis, or by or in an approved establishment;

"treatment authorization" has the meaning given by Article 22(2);

"Tribunal" means the Mental Health Review Tribunal constituted under Part 7.

(2) A person with learning disability shall not be considered by reason of that disability to be suffering from mental disorder for the purposes of Part 3, unless the learning disability is associated with abnormally aggressive or seriously irresponsible conduct on the part of that person.

(3) Dependence on alcohol or drugs is not to be considered mental disorder or any other disability of the mind for the purposes of this Law.

(4) In this Law, except in Part 8, a reference to a person's capacity or lack of capacity is, unless otherwise indicated, to be interpreted in accordance with the Capacity Law.

(5) The States may by Regulations amend this Article.

2 Minister's primary duty

(1) The Minister's primary duty under this Law is to make provision in Jersey for the care and treatment of persons suffering mental disorder.

(2) In carrying out the duty imposed by paragraph (1), the Minister must in particular –

(a) appoint an administrator in accordance with Article 4;

(b) approve establishments or premises in accordance with Article 5;

(c) appoint, approve or, as the case may be, authorize all such medical and other officers and persons as may from time to time be necessary for the purpose of giving effect to this Law, and in particular such officers and persons as are required to be appointed, approved or authorized under Articles 6, 16 and 38;

(d) keep, and publish, a register of such appointments, approvals and authorizations, in whatever manner the Minister considers appropriate; and

(e) issue a code of practice in accordance with Article 90.

3 Ancillary functions of the Minister

(1) The Minister may do anything which appears to the Minister to be necessary, conducive or expedient to the proper discharge of the duty imposed by Article 2.

(2) In particular, and without derogation to the generality of paragraph (1), the Minister may –

(a) upon appointing or authorizing any person, impose such terms and conditions as the Minister may think fit;

(b) provide, or secure the provision of, establishments and facilities for care and treatment, and management and general supervision of such establishments and facilities;

(c) arrange, or make arrangements for –

(i) the admission and reception of persons into such establishments,

(ii) the treatment, care and detention of patients in such establishments, and

(iii) the treatment and care of patients who are not admitted to nor liable to be detained in approved establishments;

(d) provide, or secure the provision of, centres or other facilities for training, occupation and employment of patients, and the equipment and maintenance of such centres or facilities;

(e) provide, or secure the provision of, ancillary or supplementary services designed for –

(i) the promotion of better mental health,

(ii) the prevention of mental disorder,

(iii) promoting better care and treatment of patients, and

(iv) the welfare of patients.

4 Appointment of administrator

(1) The Minister must appoint a person to be the administrator in relation to such matters under this Law, and under Part 5 of the Capacity Law, as the Minister may (by code of practice or otherwise) direct.

(2) The administrator must publish an annual report containing such information as the Minister may direct, including (but not limited to) details as to approved establishments and practitioners, and as to applications to the Mental Health Review Tribunal.

5 Approved establishments

(1) The Minister must approve establishments or premises for the purpose of the care and treatment of patients, upon such terms and conditions as (subject to paragraph (2)) the Minister may think fit.

(2) The Minister may not exercise the function conferred by paragraph (1) unless the Minister is satisfied that, having regard to the best available treatment, the standard of treatment provided by the establishment or premises in question is appropriate and adequate.

6 Authorized officers

(1) The Minister may authorize as officers for the purposes of this Law (including, where appropriate, for the purpose of carrying out functions conferred on the Minister under this Law) such persons –

(a) as are registered pursuant to the Health Care (Registration) (Jersey) Law 1995[3]; and

(b) have such training and experience in the field of mental health and in the application of mental health legislation and practice as may be prescribed,

upon such terms and conditions as the Minister may think fit.

(2) An authorized officer must perform his or her functions under this Law –

(a) with fairness and impartiality; and

(b) in the best interests of any patient with whose care or treatment he or she is involved.

(3) The Minister may revoke an authorization under this Article, and may vary any terms and conditions upon which such an authorization is granted.

PART 2

THE 'NEAREST PERSON'

7 Nearest person in relation to a patient

(1) In relation to every patient there shall be a natural person who fulfils the role of the patient's nearest person for the purposes of this Law.

(2) A patient's nearest relative (as determined in accordance with Article 8 or 9) shall be that patient's nearest person, unless a nomination is made under Article 10 or an appointment is made under Article 11.

(3) The nearest person shall have all such functions as are conferred by this Law and in particular the right to act on behalf of the patient as further provided by Article 13.

(4) The role of a nearest person as defined by this Article is additional to, and does not derogate from, the role of an independent mental health advocate under Article 79.

8 Definition of 'nearest relative'

(1) This Article applies to determine the nearest relative of –

(a) a patient aged 18 or over;

(b) a patient under 18 years of age to whom Article 8 does not apply.

(2) Where the patient (when not admitted for treatment) ordinarily resides with or is cared for by a relative, that relative is the patient's nearest relative.

(3) A relative for the purposes of this Part is a person who, at the time the question falls to be determined (the "relevant time"), is the patient's –

(a) spouse or civil partner;

(b) son or daughter;

(c) father or mother;

(d) brother or sister;

(e) grandparent;

(f) grandchild;

(g) uncle or aunt; or

(h) nephew or niece.

(4) In any case where paragraph (2) does not apply, the patient's nearest relative is the living person who at the relevant time is first (according to the rules given by paragraphs (5) and (6)) in the list in paragraph (3).

(5) In determining priority of relationships for the purposes of paragraph (3) –

(a) in respect of sub-paragraphs (1)(b) to (h) –

(i) a relative of the whole blood shall be preferred to a relative of the same description of the half-blood, but otherwise a relative of the half-blood shall be treated as a relative of the whole blood, and

(ii) the elder or eldest of 2 or more relatives in any of those sub-paragraphs shall be preferred to any other of those relatives, regardless of sex;

(b) an adopted person shall be treated as the child of the person or persons by whom he or she was adopted;

(c) a child of persons who are not married to, or in a civil partnership with, each other shall be treated –

(i) as the child of his or her mother, or

(ii) where the child's father has parental responsibility for the child, as the child of his or her father.

(6) A person who would, apart from this paragraph, be the patient's nearest relative but who, at the relevant time –

(a) in the case of a patient ordinarily resident in Jersey, is not so resident;

(b) being the patient's spouse or civil partner –

(i) is permanently separated from the patient, either by agreement or under an order of court, or

(ii) has deserted, or been deserted by, the patient for a period which has not come to an end; or

(c) not being the spouse, civil partner, father or mother of the patient, is under 20 years of age,

shall be disregarded for the purposes of paragraph (3).

9 'Nearest relative' of certain patients aged under 18

(1) This Article applies to determine the person deemed to be the nearest relative of a patient who is –

(a) under 18 years of age; and

(b) within one of the cases described in paragraphs (2) to (4).

(2) In a case where the rights and powers of a parent of the patient are vested in the Minister or in any other person by order of a court, that person is the patient's nearest relative, in preference to any other person except a spouse or civil partner of the patient.

(3) In a case where –

(a) the patient is a minor under *tutelle*; and

(b) his or her guardian is a person other than –

(i) the patient's nearest relative as determined by Article 8, or

(ii) a nearest person appointed under Article 11,

the guardian shall be the patient's nearest relative, in preference to any other person.

(4) In a case where the patient is in the custody of any person –

(a) by virtue of an order made by a court –

(i) in the exercise of its jurisdiction whether customary or conferred by enactment,

(ii) in matrimonial proceedings or proceedings for the annulment or dissolution of a civil partnership; or

(b) by virtue of a separation agreement made between the patient's father and mother,

the person having custody shall be the patient's nearest relative, in preference to any other person.

10 Nomination of nearest person

(1) A patient who is aged 18 or over may nominate a person as his or her nearest person, in the prescribed form or in writing substantially to the same effect and sent to –

(a) the person nominated; and

(b) the Minister.

(2) The Minister may nominate a person as the patient's nearest person by giving notice in writing to that person, where –

(a) a patient –

(i) is under 18 years of age, or

(ii) lacks the necessary capacity to make such an appointment;

and

(b) the patient's nearest relative –

(i) cannot be identified, or

(ii) has confirmed in writing to the Minister that he or she is unable or unwilling to act as the patient's nearest person.

(3) A nomination under paragraph (1) or (2) –

(a) shall not take effect unless the person nominated ("R") has given his or her consent, in the prescribed form or in writing substantially

to the same effect, to acting as the patient's nominated nearest person; and

(b) may be revoked or varied by further written notice given by the patient or, as the case may be, by the Minister.

(4) A patient may nominate more than one person under paragraph (1), but in doing so must indicate by that nomination the priority in which the appointees are to act.

(5) R must cease to act as the patient's nearest person in any respect under this Law, upon the occurrence of any of the following events –

(a) the revocation by the patient of R's nomination;

(b) the revocation by the Minister of R's appointment;

(c) the death of either the patient or R;

(d) the withdrawal by R, by notice in writing, of R's consent;

(e) an order of the court under Article 11 appointing a person other than R as the patient's nearest person.

11 Appointment of nearest person by the Court

(1) On an application made to the Court –

(a) by one of the persons listed in paragraph (2) (the "applicant"); and

(b) stating one of the grounds listed in paragraph (4),

the Court may by order appoint the applicant to be the patient's nearest person, if the applicant consents to do so and in the opinion of the Court the applicant is a proper person to carry out the functions of a nearest person.

(2) The applicant may be –

(a) the patient;

(b) an authorized officer;

(c) any relative of the patient;

(d) any other person with whom the patient ordinarily resides (when not admitted for treatment).

(3) In the case of an application made by an authorized officer, paragraph (1) shall apply as if for the word "applicant", in each place except sub-paragraph (a), there were substituted the word "Minister".

(4) An application for an order may be made –

(a) where no nearest person has been nominated under Article 10, on any of the following grounds –

(i) that the patient has no nearest relative or that it is not reasonably practicable to determine whether or not the patient has a nearest relative, or the identity of such a relative,

(ii) that the patient's nearest relative is incapable of acting as such by reason of mental disorder or other illness, or

(iii) that the patient's nearest relative is otherwise not a suitable person to act as such, by reason of matters which shall be stated in the application;

(b) where a nearest person has been nominated under Article 10, on either of the following grounds –

(i) that the nominated nearest person is incapable of acting as such by reason of mental disorder or other illness, or

(ii) that the nominated nearest person is otherwise not a suitable person to act as such, by reason of matters which shall be stated in the application.

12 Discharge, variation and cessation of orders under Article 11

(1) An order under Article 11 may be discharged by the Court on an application made –

(a) in any case, by –

(i) the patient, or

(ii) the patient's nearest person appointed by the order; or

(b) where –

(i) the order was made on a ground specified in paragraph (4)(a)(i) or (ii) of that Article, or

(ii) a person who was the patient's nearest relative when the order was made has ceased to be the patient's nearest relative,

by a person who claims to be the patient's nearest relative, under Article 8 or 9.

(2) An order under Article 11 may be varied by the Court on the application of –

(a) the patient's nearest person appointed by the order; or

(b) a duly authorized officer,

by substituting for that nearest person the Minister or any other person who, in the opinion of the Court, is a proper person and is capable of, and consents to, carrying out the functions of the patient's nearest person.

(3) If the nearest person appointed by an order under Article 11 dies, the provisions of this Article shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under this Article, no person shall exercise the functions of the patient's nearest person.

(4) An order under Article 11 shall cease to have effect in accordance with either paragraph (5) or paragraph (6), unless it is first discharged under paragraph (1).

(5) If –

(a) on the date of the order, the patient was liable to be detained or was subject to guardianship under Part 4; or

(b) within the period of 3 months beginning with the date of the order, the patient became liable to be detained or subject to guardianship,

the order shall cease to have effect when the patient ceases to be so liable or so subject, other than by being transferred under Article 26.

(6) If, on the date of the order, the patient was not liable to be detained or subject to guardianship under Part 4 and has not become so liable or so subject within the period of 3 months beginning with the date of the order, the order shall cease at the expiration of that period.

(7) Discharge, variation or cessation of an order under this Article shall not affect the validity of anything done under the order prior to such discharge or variation.

13 Rights of nearest person to receive information as to patient's care or treatment

(1) Unless one of the conditions in paragraph (3) is satisfied –

(a) the responsible medical officer must provide the nearest person with details (in writing, where reasonably practicable) of any care or treatment proposed in respect of the patient;

(b) the nearest person is entitled to make representations to the responsible medical officer about such proposals; and

(c) the responsible medical officer must, in prescribing or administering care or treatment to the patient, have regard to any representations made under sub-paragraph (b).

(2) In particular and without derogation from the general requirement in paragraph (1)(a), the responsible medical officer must inform the nearest person –

(a) where a treatment authorization is renewed under Article 22, of the reasons for renewal mentioned in Article 22(4)(a);

(b) of any leave of absence granted under Article 24, and of any conditions (including treatment conditions) attaching to such leave of absence;

(c) where a plan of treatment is formulated for the purposes of Part 6, of the contents of the plan and of any significant changes which may be made to the plan from time to time;

(d) of any proposed treatment for which a certificate would be required from a SOAD under Article 40 or 41; and

(e) of such other details of a kind which may be specified in a code of practice.

(3) The conditions mentioned in paragraph (1) are that –

(a) where the patient has capacity to do so, the patient has refused to give consent to the disclosure to the nearest person of the details of proposed care or treatment (whether generally or in a particular instance);

(b) where the patient lacks capacity to give or refuse consent, the responsible medical officer considers that it is not in the patient's best interests to disclose such details; or

(c) in any other case, the responsible medical officer considers that disclosure of such details would be likely to cause serious harm to the patient or to any other person.

(4) Where one of the conditions in paragraph (3) is satisfied, the responsible medical officer shall inform the nearest person (in writing, where reasonably practicable) that details under paragraph (1) are not provided for that reason, identifying the particular condition which is satisfied in the case.

(5) A nearest person is entitled to be informed of any proposed transfer of a patient under Article 26, and of the date of such transfer.

(6) This Article applies in addition to, and not in derogation from, any rights otherwise conferred on a nearest person by this Law or any other enactment.

PART 3

APPROVED ESTABLISHMENTS: ADMISSIONS FOR ASSESSMENT, TREATMENT, ETC.

14 Voluntary admissions

(1) If a patient requires or wishes to receive treatment, nothing in this Law shall prevent the patient –

(a) from being admitted to any approved establishment for treatment in pursuance of arrangements made for that purpose, without an admission application being made under Article 18; or

(b) from remaining in the establishment, with the consent of the responsible medical officer, after ceasing to be liable to be detained.

(2) Where a patient aged 16 years or over, who has capacity to do so, consents to the making of arrangements such as are mentioned in paragraph (1), those arrangements may be made, carried out and determined on the basis of that consent, even though there are one or more persons having parental responsibility for that patient.

(3) Where a patient aged 16 years or over, who has capacity to give consent, does not consent to the making of arrangements such as are mentioned in paragraph (1), those arrangements may not be made, carried out or determined on the basis of consent given by a person who has parental responsibility for that patient.

15 Emergency admissions

(1) This Article applies in a case where a patient –

(a) is brought to, or presents himself or herself at, an approved establishment; or

(b) has been admitted to an approved establishment under arrangements such as are mentioned in Article 14(1)(a), but no longer consents to remain.

(2) Where this Article applies and, in the opinion of an approved practitioner, there is an urgent necessity for the patient to be admitted for assessment on the grounds that –

(a) it is likely that the patient is suffering from mental disorder; and

(b) allowing the patient to remain at liberty would endanger either the patient's safety or that of other persons,

the approved practitioner may authorize immediate admission of the patient, and the patient may be detained for a period not exceeding the time limits in paragraph (4).

(3) For the purposes of paragraph (2), there is no urgent necessity where an application for assessment or treatment authorization under Article 21 or 22 could be made without undue delay.

(4) Authorization of detention under this Article shall expire –

(a) at the end of the period of 72 hours beginning with the time when the opinion mentioned in paragraph (2) is formed;

(b) when, in the opinion of an approved practitioner, the grounds in paragraph (2) no longer apply in respect of the patient; or

(c) when the patient is admitted for assessment or treatment under Article 21 or 22,

whichever is the first to occur.

(5) Authorization under paragraph (2) and the approved practitioner's opinion under paragraph (4)(b) shall be recorded in writing, and a copy of the authorization shall be sent to the Minister, as soon as practicable.

16 Approved practitioners

(1) A registered medical practitioner may be approved by the Minister under this Article where the Minister is satisfied, on the production of such evidence as may be prescribed, that the practitioner has sufficient experience and training in the field of mental health and in the operation of legislation relating to mental health.

(2) Approval of a person under this Article may be granted upon such terms and conditions as the Minister thinks fit, and the approval may be revoked and any terms or conditions upon which it is granted may be varied by the Minister.

17 Detention by nurse

(1) This Article applies where –

(a) a patient (other than a patient already liable to be detained under this Part) is receiving treatment for mental disorder as an in-patient in an approved establishment; and

(b) it appears to a registered nurse that –

(i) the patient is suffering from a mental disorder,

(ii) to allow the patient to be at liberty would endanger the patient's safety or the safety of other persons, and

(iii) it is not practicable to secure the immediate attendance of an approved practitioner.

(2) Where this Article applies –

(a) the nurse must make a record in writing of the matters in paragraph (1)(b); and

(b) subject to paragraph (3), the patient may be detained in the approved establishment for a period of no longer than 6 hours beginning at the time the record is made.

(3) If an approved practitioner attends the patient during the final hour of the period mentioned in paragraph (2)(b), the patient may be detained for a further period of no longer than one hour beginning at the time of that attendance.

(4) A nurse who makes a record under paragraph (2) must deliver that record as soon as possible after making it to the managers of the approved establishment.

(5) For the purposes of this Article, "registered nurse" means a person registered as a nurse under the Health Care (Registration) (Jersey) Law 1995[4].

18 Applications for admission of patient: general requirements

(1) An application for the admission of a patient on the grounds set out in Article 21 or 22 must be made in writing to the Minister and in accordance with this Article and Article 19.

(2) An application under this Article (an "admission application") 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;

(b) contain a statement that, in the opinion of each of the practitioners making recommendations as required by paragraph (3), the grounds for admission stated in Article 21(1) or 22(1) (as the case may be) are met; and

(c) be sent by the authorized officer to the Minister as soon as practicable after the application has been completed in accordance with this Article and Article 19.

(3) All such applications must include, or be accompanied by, recommendations of 2 registered medical practitioners (the "medical recommendations", as to which further provision is made by Article 19), one of whom must be an approved practitioner.

(4) Subject to paragraph (5), the medical recommendations may be given either –

(a) as separate documents, each signed by the practitioner by which it is made; or

(b) as a joint document signed by both practitioners.

(5) Where a form of application is prescribed, an application must be made using that form.

(6) For the avoidance of doubt, an admission application may be made in respect of the further detention of a patient already admitted to an approved establishment –

(a) on a voluntary basis, under Article 14; or

(b) on an emergency basis, under Article 15.

19 Medical recommendations: further requirements

(1) Medical recommendations must –

(a) be given by practitioners who have personally examined the patient either jointly or, if separately, at an interval of not more than 5 days; and

(b) be signed, by those giving them, on or before the date of the application to which they relate.

(2) An approved practitioner giving medical recommendations should, where practicable, have previous acquaintance with the patient in relation to whom the recommendations are made (but where both practitioners giving the recommendations are approved practitioners, this requirement shall apply only to one of them).

(3) Subject to paragraph (4), medical recommendations may not be given by –

(a) the authorized officer making the application under Article 18;

(b) a partner of, or person employed by, the applicant or a practitioner by whom medical recommendations are given for the purposes of the same application;

(c) a person who receives or has an interest in the receipt of any payments made for maintenance of the patient;

(d) a relative of the patient or of any person mentioned in sub-paragraphs (a) to (c) (and relationship for this purpose includes relationship of the half-blood).

20 Effect of admission application

(1) An admission application which is made in accordance with Articles 18 and 19 shall be sufficient authority, at any time within the period of 72 hours beginning with the time at which the application is made –

(a) for the applicant, or any person authorized by the applicant, to take the patient and convey him or her to an approved establishment; and

(b) provided that the requirements of paragraph (2) are fulfilled, for the managers of the approved establishment ("M" in this Part) to admit the patient and detain him or her in the approved establishment for a period of no longer than one week beginning with the date of admission (the "initial period").

(2) A copy of the admission application must be provided to M at the time when the patient is admitted under paragraph (1)(b), and if M is satisfied that –

(a) the admission application appears to have been duly made in accordance with Articles 18 and 19; and

(b) the admission is within the period of 72 hours mentioned in paragraph (1),

M must, as soon as reasonably practicable and in any event no later than 24 hours before the end of the initial period, give notice in writing to the Minister that the patient to whom the admission application relates has been admitted to the approved establishment.

(3) An admission application may be acted upon under paragraphs (1) and (2) without further proof of the signature or qualification of the applicant or of any person making medical recommendations, or of any matter of fact or opinion stated in the application.

(4) Following receipt of notice under paragraph (2) and within the initial period, the Minister must –

(a) confirm in writing to M that the admission application has been duly made; and

(b) authorize the admission and further detention of the patient –

(i) for assessment under Article 21, or

(ii) for treatment under Article 22,

as the case may be.

(5) Admission and detention under this Article is subject to the rights conferred on a patient by Article 50(1).

(6) For the avoidance of doubt –

(a) if M is not satisfied as provided by paragraph (2); or

(b) the Minister's authorization under paragraph (4) is not received by M within the initial period,

M must release the patient from detention.

21 Assessment authorization

(1) An application for admission of a patient for assessment may be made on the grounds that –

(a) the patient appears to be suffering from mental disorder of a nature or degree which warrants the detention of the patient in an approved establishment, with or without treatment, for at least a limited period; and

(b) it is necessary –

(i) in the interests of the patient's health or safety, or

(ii) for the protection of other persons,

that the patient should be so detained.

(2) Where the Minister gives an authorization under Article 20(4)(b)(i) (an "assessment authorization") –

(a) subject to paragraph (4), the patient may be detained in the approved establishment for a specified period of no longer than 28 days beginning with the date on which the patient is admitted; and

(b) during such detention the patient may be provided with any appropriate and lawful treatment.

(3) An assessment authorization may not be renewed.

(4) Where the admission application relates to a patient who was first admitted under Article 14 or 15, the period mentioned in sub-paragraph (2)(a) shall begin with the day on which the admission application is received by M.

(5) Paragraph (2) is subject to the rights conferred on a patient by Article 50(1).

22 Treatment authorization

(1) An application for admission of a patient for treatment may be made on the grounds that –

(a) the patient appears to be suffering from mental disorder of a nature or degree which warrants the detention of the patient in an approved establishment for treatment; and

(b) it is necessary –

(i) in the interests of the patient's health or safety, or

(ii) for the protection of other persons,

that the patient should be so detained.

(2) Where the Minister gives an authorization under Article 20(4)(b)(ii) (a "treatment authorization") –

(a) the patient may be detained in the approved establishment for a period of no longer than 6 months beginning with the date on which the patient is admitted; and

(b) during such detention the patient may be provided with any appropriate and lawful treatment.

(3) A treatment authorization may be renewed for one additional period of 6 months, and thereafter for further periods of 12 months, in accordance with paragraph (4).

(4) Within the period of 2 months immediately preceding the day on which the patient's liability to detention ceases, the responsible medical officer must examine the patient and make a report to the Minister recommending –

(a) the renewal of the treatment authorization, if it appears to the responsible medical officer that it is necessary –

(i) in the interests of the patient's health or safety, or

(ii) for the protection of other persons,

that the patient should continue to be liable to be detained; or

(b) that the treatment authorization should not be renewed.

(5) Where a report under paragraph (4) is provided in respect of a patient, the Minister must –

(a) inform the patient and the patient's nearest person of the recommendations and the action proposed to be taken; and

(b) where the report contains a recommendation under paragraph (4)(a), renew the treatment authorization for the appropriate period as provided by paragraph (3).

(6) Where the report contains a recommendation under paragraph (4)(b), the responsible medical officer must discharge the patient.

(7) Where the admission application relates to a patient who was first admitted under Article 14 or 15, the period mentioned in sub-paragraph (2)(a) shall begin with the day on which the admission application is received by M.

(8) Where a treatment authorization is renewed under paragraph (3), any additional or further period of detention for which the renewal is granted (the "new period") shall begin immediately following the expiration of the previous period of detention, and paragraphs (4) and (5) shall apply in respect of the new period.

(9) Paragraphs (2), (3) and (4)(a) are subject to the rights conferred on a patient by Article 50(1).

23 Rectification of applications and medical recommendations

(1) Paragraph (2) applies in a case where it appears to the Minister or to the managers of an approved establishment that the admission application or any related medical recommendation is incorrect or defective.

(2) Where this paragraph applies –

(a) the error or defect in question may, with the consent of the Minister, be rectified by the applicant or (as the case may be) the person who signed the recommendation; and

(b) the application or recommendation shall have effect (and be deemed to have had effect) as though duly completed without the error or defect.

(3) Without prejudice to paragraph (1), if within the initial period mentioned in Article 20(1) it appears to the managers of an approved establishment that a medical recommendation related to any application is insufficient to warrant the detention of the patient, the managers may within the same period give notice in writing of the insufficiency to the applicant and of the fact that the recommendation shall be disregarded.

(4) Where notice is given under paragraph (3), the application to which the recommendation relates shall nevertheless be (and be deemed always to have been) sufficient if –

(a) a fresh recommendation which complies with Article 19(1) to (3) and is not defective in any respect is provided to the managers; and

(b) that recommendation, taken together with any other recommendation relating to the same application, is sufficient to warrant the detention of the patient.

24 Leave of absence from approved establishment

(1) The responsible medical officer may in accordance with this Article grant, to any patient who is liable to be detained in an approved establishment under this Part, leave to be absent from that establishment.

(2) The grant of leave under paragraph (1) may be made unconditionally, or subject to conditions –

(a) of a kind which may be prescribed; and

(b) in any particular case, such as the responsible medical officer may consider necessary –

(i) in the interests of the patient's health or safety, or

(ii) for the protection of other persons.

(3) Leave of absence may be granted –

(a) on specified occasions;

(b) for any specified period; or

(c) (subject to Article 25) indefinitely.

(4) Where leave of absence is granted –

(a) for a specified period exceeding 7 days; or

(b) for an indefinite period,

the responsible medical officer must give notice in writing to the Minister of the grant of leave, the period for which, and the conditions (if any) upon which leave is granted.

(5) Subject to paragraphs (7) and (8), where leave of absence is granted for any specified period, that period may be extended by further leave granted in the absence of the patient.

(6) Where it appears to the responsible medical officer that it is necessary to do so –

(a) in the interests of the patient's health or safety; or

(b) for the protection of other persons,

that officer may, on granting leave of absence, direct that the patient shall remain in custody during the absence; and in such a case the patient may be kept in the custody of any member of staff of the approved establishment or of any other person authorized for that purpose by the responsible medical officer.

(7) Where a patient is absent on leave granted under this Article, and it appears to the responsible medical officer that it is necessary to do so –

(a) in the interests of the patient's health or safety; or

(b) for the protection of other persons,

that officer may (subject to paragraph (9) and to the rights conferred on a patient by Article 50(1)), by notice in writing to the patient or to the person having custody of the patient under paragraph (6), revoke the leave of absence and recall the patient to the approved establishment.

(8) The responsible medical officer may from time to time vary or suspend, by notice in writing to the patient or to the person having custody of the patient under paragraph (6), the period for which and any conditions (other than conditions prescribed under paragraph (2)(a)) upon which leave of absence is granted.

(9) A patient to whom leave of absence is granted for an indefinite period shall not be recalled under paragraph (7) after the patient has ceased to be liable to be detained under this Part.

(10) For the avoidance of doubt and without derogation from the generality of the power conferred by paragraph (2)(a), conditions to be prescribed under that sub-paragraph may include conditions as to the examination of a patient or the review of a patient's treatment, at such times or intervals as may be prescribed, by the responsible medical officer (or, where the patient's treatment is of a kind requiring consent under Part 6, by the responsible medical officer and a SOAD).

25 Return of patients absent without leave

(1) This Article applies where a patient who is for the time being liable to be detained in an approved establishment –

(a) absents himself or herself from the establishment without leave granted under Article 24; or

(b) fails to return to the establishment –

(i) on any occasion, or at the expiration of any period, for which leave was granted to the patient under that Article, or

(ii) upon being recalled under paragraph (7) of that Article.

(2) Where this Article applies the patient may be taken into custody and returned to the establishment by –

(a) the managers of that establishment or any member of staff of the establishment authorized for that purpose by the managers; or

(b) a police officer.

(3) Detention of the patient in custody or following return to an approved establishment under paragraph (2) is subject to the rights conferred on a patient under Article 50(1).

(4) A patient shall not be taken into custody under this Article after the expiration of the period of 6 months beginning with the first day of the patient's absence without leave, and a patient who has not returned to the establishment nor been taken into custody within that period shall, at the expiration of that period, cease to be liable to be detained.

26 Transfer of patients

(1) The Minister may arrange for the transfer of a patient liable to be detained under this Part from one approved establishment to another.

(2) Where a patient is transferred pursuant to arrangements made under paragraph (1), this Part shall apply to the patient as if –

(a) the admission application by virtue of which the patient was liable to be detained were an application for admission to the approved establishment to which the patient is transferred; and

(b) the patient had been admitted to that establishment at the time when the patient was originally admitted under the admission application.

27 Discharge of patients

(1) A responsible medical officer may, in accordance with this Article and having regard to the care and supervision which would be available to the patient if discharged, direct the discharge of a patient from the approved establishment in which the patient is liable to be detained.

(2) The responsible medical officer must direct the discharge of the patient unless –

(a) the exception in paragraph (6) applies; or

(b) having regard to the care or supervision which would be available to the patient if discharged, the responsible medical officer is satisfied that –

(i) the patient is suffering from a mental disorder of a nature or degree which warrants continued detention and treatment, and

(ii) it is necessary for the patient to be detained in the interests of the patient's health or safety, or for the protection of other persons.

(3) Where a direction for discharge is duly made under this Article, any assessment authorization or treatment authorization relating to the patient in question shall cease to have effect.

(4) Notice in writing of the discharge must be given by the responsible medical officer to –

(a) the patient;

(b) the patient's nearest person;

(c) the Minister; and

(d) the managers of the approved establishment,

and where a form is prescribed for the purpose, must be given in that form.

(5) A patient's nearest person may give notice in writing to the responsible medical officer requesting the exercise of the power to discharge the patient, and where such notice is given –

(a) the responsible medical officer shall consider the request, unless another such request from the same nearest person has been received by that officer within the period of 30 days ending on the date of receipt of the notice; and

(b) if the responsible medical officer decides not to discharge the patient, reasons for that decision must be given in writing to the nearest person.

(6) A direction for discharge of a patient detained pursuant to the provisions of Part 9 may be made under this Article, except that no such direction shall be made for discharge of a defendant in respect of whom a treatment order under Article 65 is made subject to special restrictions under Article 68.

28 Special provisions: patient absent without leave

(1) Paragraph (2) applies where a patient is absent without leave –

(a) on the day on which (apart from this Article) the patient would cease to be liable to be detained under this Part or to be subject to guardianship under Part 4; or

(b) within the period of one week ending on that day.

(2) Where this paragraph applies, the patient shall continue to be liable to be detained, or (as the case may be) subject to guardianship under Part 4, until the expiration of the period of one week beginning with the day on which the patient is returned under Article 25 or 31, or returns to the approved establishment or to the place where (under the terms of his or her guardianship) the patient ought to be.

(3) Where the period for which a patient is liable to be detained or is subject to guardianship is extended by the application of paragraph (2), any examination or report under Article 22(4) or 33(4) may be made within that period as so extended.

(4) Paragraph (5) applies where –

(a) later than the end of the period of 28 days beginning with the first day on which a patient is absent without leave; but

(b) before the end of the period of 6 months beginning with that day,

the patient is returned under Article 25 or 31, or returns to the approved establishment or to the place where (under the terms of his or her guardianship) the patient ought to be.

(5) Where this paragraph applies, an approved practitioner must, within the period of one week beginning with the day of the patient's return –

(a) examine the patient and, if the patient is a patient liable to be detained, consult such other persons concerned with the patient's care or treatment as may be appropriate; and

(b) if it appears to the responsible medical officer that the conditions in paragraph (6) are fulfilled, make a report in writing to that effect to M and to the Minister.

(6) The conditions mentioned in paragraph (5)(b) are that –

(a) the patient appears to be suffering from mental disorder of a nature or degree which warrants –

(i) the detention of the patient in an approved establishment for treatment, or

(ii) the reception of the patient into guardianship; and

(b) it is necessary –

(i) in the interests of the patient's health or safety, or

(ii) for the protection of other persons,

that the patient should be so detained or received.

(7) Where the patient would (apart from paragraphs (1) to (3)) have ceased to be liable to be detained or subject to guardianship on, before, or within the period of 2 months beginning with, the day on which the report is provided under paragraph (5)(b) –

(a) the report shall renew any existing authorization under Article 21, 22 or 30, as the case may be; and

(b) that renewal shall take effect from the day on which the existing authorization would (but for this paragraph) have expired,

for a period of no longer than 6 months beginning with that day (and in the case of an authorization under Article 22, the provisions of Article 22(3) to (9) shall apply afresh as though the report were a treatment authorization under that Article).

PART 4

GUARDIANSHIP

29 Application for guardianship

(1) An application for the reception of a patient into guardianship (a "guardianship application") must be made in writing to the Minister and in accordance with this Article.

(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

(b) contain a statement that, in the opinion of each of the persons required by paragraph (4), the grounds stated in paragraph (3) are met.

(3) The grounds mentioned in paragraph (2)(b) 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 for the patient to be received into guardianship –

(i) in the interests of the patient's welfare, or

(ii) for the protection of other persons.

(4) All such applications must include, or be accompanied by, recommendations of 2 registered medical practitioners (the "medical recommendations", as to which Article 19 shall apply as if the application were an application under Part 3), one of whom must be an approved practitioner.

(5) The medical recommendations may be given either –

(a) as separate documents, each signed by the practitioner by which it is made; or

(b) as a joint recommendation signed by both practitioners.

(6) A guardianship application shall be of no effect unless –

(a) it is received by the Minister within the period of 7 days beginning with the date on which the patient was last examined by a registered medical practitioner with a view to making a medical recommendation; and

(b) it appears to the Minister to be duly made under this Article.

(7) Where the guardianship application names a person other than the Minister as guardian, it must also include or be accompanied by a statement that the person so named consents to act as guardian in relation to the patient.

(8) Where a form of application under this Article is prescribed, an application must be made using that form.

30 Effect of application for guardianship

(1) A guardianship application authorized by the Minister (a "guardianship authorization") shall be sufficient authority for the reception of the patient into the guardianship of the person named as guardian in the application.

(2) A guardianship authorization shall confer on the person named as guardian, to the exclusion of any other person, the power –

(a) subject to paragraph (3), to require the patient to reside at a place specified by the guardian;

(b) to require the patient to attend at times and places so specified for the purpose of treatment, occupation, education or training;

(c) to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, authorized officer or other person so specified.

(3) Paragraphs (1) and (2) are subject to the rights conferred on a patient by Article 50(1).

(4) For the avoidance of doubt the words "the exclusion of any other person" in paragraph (2) shall not have effect, where the Minister is the person named as guardian, to exclude the exercise of powers under this Article by a person to whom the Minister has lawfully delegated those powers.

(5) Where the person named as guardian is the Minister, the Minister may (if considering that it is justifiable in the circumstances to do so) require that the patient –

(a) must reside –

(i) in an approved establishment, or

(ii) with such person as the Minister may think fit;

(b) must attend training specified by the Minister at such place and times or for such periods as may be so specified.

(6) The States may by Regulations make provision for –

(a) imposing on guardians, in cases where the person named as guardian is not the Minister, such duties as may be considered necessary or expedient in the interests of patients subject to guardianship; and

(b) the creation of offences, punishable by fines of up to level 3 on the standard scale, for breach of such provision.

(7) Where, at any time after a patient is received into guardianship, the application or any related medical recommendation is found to be in any respect incorrect or defective –

(a) the error or defect in question may, with the consent of the Minister, be rectified by the applicant or (as the case may be) the person who signed the recommendation; and

(b) the application or recommendation shall have effect (and be deemed to have had effect) as though made originally without the error or defect.

(8) Where a patient is received into guardianship, any previous application under Part 3 or any previous guardianship application in respect of the same patient shall cease to have effect.

31 Powers of re-taking into custody

(1) Where a patient who is subject to guardianship and to a residence requirement under Article 30(2)(a) or (5)(a)(i) absents himself or herself without the leave of the guardian from the place at which he or she is required to reside, the patient may be taken into custody and returned to that place by –

(a) the guardian;

(b) a person authorized in writing by the guardian to do so;

(c) a police officer;

(d) an authorized officer; or

(e) where the place is an approved establishment, the managers of that establishment or any member of staff of the establishment authorized by the managers for that purpose.

(2) A patient shall not be taken into custody under this Article after the expiration of the period of 6 months beginning with the first day of the patient's absence without leave, and a patient who has not returned nor been taken into custody within that period shall, at the expiration of that period, cease to be subject to guardianship.

32 Transfer of guardianship and substitution of guardian

(1) The Minister may arrange for the transfer of a patient received into guardianship under this Part from the guardianship of any person ("G1") into the guardianship of any other person ("G2"), including the Minister.

(2) The Minister must arrange for the transfer of a patient under paragraph (1) where it appears to the Minister that any person appointed as a guardian under this Part has performed that function negligently or in a manner contrary to the interests of the patient.

(3) Where the power in paragraph (1) is exercised, G2 shall be treated at all times and for all the purposes of this Part as if G2 (and not G1) had been the person named in the guardianship application as a result of which the patient was received into guardianship.

(4) If a person appointed as a guardian under this Part becomes incapacitated by illness or any other cause from so acting –

(a) the Minister or any other person approved for the purpose may act as guardian of the patient concerned during the guardian's incapacity; and

(b) paragraph (3) shall apply as if the person acting as guardian under this paragraph were G2.

(5) The States may by Regulations make further provision as to the transfer of patients –

(a) between guardianship and liability to detention in an approved establishment; and

(b) between liability to detention in an approved establishment and guardianship.

(6) Without derogation from the general power conferred by paragraph (5), Regulations under that paragraph may in particular –

(a) prescribe the circumstances in which, and the conditions subject to which, transfers under those Regulations may take place;

(b) make provision as to the application of this Part, and of Part 3, in respect of patients transferred under those Regulations; and

(c) make provision regulating the conveyance of patients transferred under those Regulations.

33 Duration of guardianship

(1) A guardianship authorization has effect for a period of 6 months beginning with the date on which the application for guardianship is authorized under Article 30(1).

(2) A guardianship authorization may be renewed in the manner provided by paragraphs (4) and (5) –

(a) for one further period of 6 months beginning immediately after the last day of the period mentioned in paragraph (1); and

(b) thereafter in the same manner for successive periods of 12 months.

(3) A patient who is received into guardianship may apply to the Tribunal, once within each of the periods mentioned in paragraphs (1) and (2), for a direction that the guardianship authorization be terminated.

(4) Within the period of 2 months ending on the day on which, were it not for any renewal under this Article, the guardianship authorization would cease to have effect, the responsible medical officer must examine the patient and make a report to the Minister, recommending –

(a) where it appears to the responsible medical officer that in the interests of the patient's welfare or for the protection of other persons, the patient should remain under guardianship, the renewal of the guardianship authorization; or

(b) the discharge of the patient from guardianship.

(5) Where a report under paragraph (4) is provided in respect of a patient, the Minister must inform the patient and the patient's nearest person of the recommendations and the action proposed to be taken and –

(a) where the report contains a recommendation under paragraph (4)(a), the Minister must renew the guardianship authorization for the appropriate period as provided by paragraph (2); or

(b) where the report contains a recommendation under paragraph (4)(b), the Minister must discharge the patient.

PART 5

OTHER FORMS OF LEGAL CUSTODY: PLACE OF SAFETY, ETC.

34 Interpretation and application of Part 5

(1) In this Part –

"convey" includes any other expression denoting removal from one place to another;

"place of safety" means –

(a) an approved establishment;

(b) in a case where, for the purpose of preventing harm to the person in question or to any other person, a police station is the most secure or suitable place, a police station; and

(c) any other place –

(i) which may be designated as such for the purpose by the Minister, or

(ii) the occupier of which consents to receive a person for a specified temporary period;

"premises" includes any vessel, vehicle, aircraft or hovercraft.

(2) Any person required or authorized by virtue of this Law to be conveyed to any place or to be kept in custody or detained in a place of safety, is deemed to be in legal custody while being so conveyed, kept or detained.

(3) Nothing in this Part shall prevent a person detained under Article 35 or 36 from being conveyed from one place of safety to another.

35 Powers of search, entry and removal of persons to place of safety

(1) Paragraph (2) applies where it appears to the Bailiff, on information given on oath by an authorized officer, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder –

(a) has been, or is being, ill-treated, neglected or kept otherwise than under detention or custody as provided by this Law, in any place; or

(b) being unable to care for himself or herself, is living alone in any place.

(2) Where this paragraph applies, and for the purpose stated in paragraph (3), the Bailiff may issue a warrant authorizing –

(a) an authorized officer; or

(b) a person of any other category specified in the warrant,

to enter, if necessary by force, any premises specified in the warrant and to search for and if necessary remove the person mentioned in paragraph (1) to a place of safety.

(3) A person may be removed to a place of safety in pursuance of a warrant issued under paragraph (2) for the purpose of –

(a) making an admission application in respect of the person under Part 3; or

(b) making other arrangements for that person's care or treatment.

(4) The exercise of the power conferred by paragraph (3) may include, where appropriate, assessment of the person for the purpose of an admission application, in the place of safety or in any other premises, including the person's home.

(5) Paragraph (6) applies where it appears to the Bailiff, on information given on oath by an authorized officer, that –

(a) there is reasonable cause to believe that a patient who is liable to be detained or taken or retaken into custody under this Law is to be found on certain specified premises; and

(b) admission to the premises has been or is likely to be refused.

(6) Where this paragraph applies, the Bailiff may issue a warrant authorizing –

(a) the authorized officer; and

(b) any other person named in the warrant,

to enter, if necessary by force, any premises specified in the warrant and to search for and if necessary remove the patient to a place of safety.

(7) In the execution of a warrant issued under this Article, the persons authorized by the warrant –

(a) must be accompanied by a registered medical practitioner; and

(b) may be accompanied by a police officer.

(8) A person who is removed to a place of safety under this Article may be detained there for a period not exceeding 72 hours beginning with the admission of the person to that place.

(9) It shall not be necessary, in any information given or warrant issued under this Article, to name or otherwise identify the person in respect of whom the information is given or the warrant is issued, as the case may be.

36 Urgent removal of persons found in public places

(1) Paragraph (2) applies where a police officer finds, in any place other than a private dwelling, a person who appears to the police officer –

(a) to be suffering from mental disorder; and

(b) to be in immediate need of care or control.

(2) Where this paragraph applies, and the police officer thinks it necessary to do so in the interests of that person or for the protection of other persons, the police officer may remove the person to a place of safety.

(3) A person who is removed to a place of safety under this Article may be detained there for a period not exceeding 72 hours beginning with the

admission of the person to that place, for the purpose of making an admission application in respect of the person under Part 3, or of making any other arrangements for the person's care or treatment.

37 Re-taking of persons into custody

(1) This Article applies in respect of persons who escape from legal custody.

(2) A person to whom this Article applies ("A") may be re-taken into custody, in accordance with this Article –

(a) by the person ("C") who had custody of A immediately before A's escape;

(b) by a police officer;

(c) by an authorized officer;

(d) in a case where, at the time of the escape A is a patient liable to be detained in an approved establishment, by the managers of the establishment or a member of staff of the establishment authorized for that purpose by the managers, as if A were absent without leave in the terms of Article 25; or

(e) in a case where at the time of the escape A is subject to guardianship and the time limit imposed by Article 31(2) on re-taking such a person has not expired, by any other person who would be entitled to take A into custody under Article 31(1), as if A were absent without leave in the terms of that Article.

(3) Where A escapes while being removed to or detained in a place of safety under Article 35 or 36, A may not be re-taken after the expiry of the period –

(a) of 72 hours beginning with the time of the escape; or

(b) during which the person is liable to be detained,

whichever expires first.

(4) Where A escapes from custody while –

(a) being conveyed to or from an approved establishment under Article 20(1); or

(b) in custody or being conveyed to another place under Part 12,

this Article and Article 25 shall apply as though A were liable to be detained in that establishment or place and, if A had not previously been received into that establishment or place, as though A had been so received.

PART 6

TREATMENT REQUIRING CONSENT

38 Interpretation and application of Part 6

(1) Subject to paragraph (2), this Part applies in relation to a patient liable to be detained under this Law, except a patient liable to be detained under Article 15 or 17 or Part 4 or 5.

(2) Articles 40, 42 and 44 apply in relation to any patient, whether or not liable to be detained under this Law.

(3) A "second opinion approved doctor or "SOAD" means a person who –

(a) is a registered medical practitioner;

(b) has such training and expertise in the field of psychiatry and in the application of mental health legislation as may be prescribed; and

(c) is approved by the Minister for the purpose of carrying out the functions of a SOAD.

(4) In this Part, a reference to treatment includes reference to a plan of treatment under which a patient is to be given (whether within a specified period or otherwise) one or more of the types of treatment listed in Article 40(2) or 41(2), as the case may be.

39 Treatment not requiring consent

The consent of a patient to whom this Part applies is not required for any treatment given to the patient for the mental disorder from which the patient is suffering, where the treatment –

(a) is not of a type listed in Article 40(2) or 41(2); and

(b) is given by or under the direction of the patient's responsible medical officer.

40 Treatment requiring both consent and a second opinion

(1) A treatment of a type listed in paragraph (2) must not be given to a patient unless –

(a) the patient has consented to the treatment; and

(b) a SOAD has given a certificate in writing in accordance with paragraphs (3) and (4).

(2) The types of treatment mentioned in paragraph (1) are –

(a) any surgical operation for destroying brain tissue or the functioning of brain tissue;

(b) the surgical implantation of hormones for reducing male sex drive;

(c) electro-convulsive therapy; and

(d) such other types of treatment as may be prescribed.

(3) A SOAD must not give a certificate in writing as required by paragraph (1)(b) unless the SOAD has consulted –

(a) the patient's responsible medical officer; and

(b) one other person who must be an authorized officer or mental health professional who, in either case, is or has been professionally concerned with the treatment of the patient,

in accordance with any further provision made by a code of practice as to such consultation.

(4) The certificate given by the SOAD must state that, in the SOAD's opinion and having consulted as required by paragraph (3) –

(a) the patient is capable of understanding the nature, purpose and likely effects of the proposed treatment and has consented to receive it; and

(b) it is appropriate for the treatment to be given to that patient.

41 Treatment requiring either consent or a second opinion

(1) A treatment of a type listed in paragraph (2) must not be given to a patient unless either –

(a) the patient has consented to the treatment, and –

(i) the patient's responsible medical officer, or

(ii) any other approved practitioner,

has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the proposed treatment and has consented to receive it;

or

(b) a SOAD has given a certificate in writing in accordance with paragraphs (4) and (5).

(2) The types of treatment mentioned in paragraph (1) are –

(a) such types as may be prescribed; and

(b) the administration of medicine to a patient –

(i) by any means (other than one set out in Article 40(2) or prescribed under sub-paragraph (a)),

(ii) at any time during a period for which the patient is liable to be detained, if 3 months or more have elapsed since the first occasion in that period when medicine was administered to the patient by any means,

for the purpose of treating the patient's mental disorder.

(3) The number of months in paragraph (2)(b)(ii) may be amended by Order of the Minister.

(4) A SOAD must not give a certificate in writing as required by paragraph (1)(b) unless the SOAD has consulted –

(a) the patient's responsible medical officer; and

(b) one other person who must be an authorized officer or mental health professional who, in either case, is or has been responsible for the treatment of the patient,

in accordance with any further provision made by a code of practice as to such consultation.

(5) The certificate given by the SOAD must state that, in the SOAD's opinion and having consulted as required by paragraph (4) –

(a) the patient –

(i) is not capable of understanding the nature, purpose and likely effects of the proposed treatment, or

(ii) has not consented to receive it; but

(b) having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given to that patient.

42 Withdrawal of consent

(1) A patient who has consented to treatment under Article 40 or 41 may withdraw that consent at any time, whether or not the treatment has been completed.

(2) Following withdrawal of consent, Articles 40 and 41 shall apply afresh to any treatment remaining to be given, as if that treatment were a separate treatment.

43 Duration of certificates

(1) A certificate given as required by Article 40(1)(b) or 41(1) shall cease to have effect at the end of the period of 6 months beginning with the date of the certificate, or such shorter period as may be specified by the SOAD in the certificate.

(2) Once a certificate has so ceased to have effect, Articles 40 and 41 shall apply afresh in relation to any treatment of a type listed in those Articles, as if no certificate had previously been given.

44 Emergency treatment

(1) A requirement for consent imposed by Article 40 or 41 shall not apply in relation to any treatment which –

(a) is immediately necessary to save a patient's life;

(b) is not irreversible and is immediately necessary to prevent a serious deterioration of a patient's condition;

(c) is not irreversible or hazardous and is immediately necessary to alleviate serious suffering by the patient; or

(d) is not irreversible or hazardous, is immediately necessary and represents the minimum interference necessary to prevent a patient behaving violently or being a danger to himself or herself or to others.

(2) Articles 41 and 43(2) shall not apply to preclude continuation of any treatment, pending compliance with Article 40 or 41, if the responsible medical officer considers that discontinuity of treatment would cause serious suffering to a patient.

(3) For the purposes of this Article, treatment is "irreversible" if it has unfavourable and permanent physical or psychological consequences, and "hazardous" if it entails significant physical hazard.

45 Examinations, records etc. for the purposes of this Part

(1) An approved practitioner or SOAD may, for the purpose of exercising functions under this Part, at any reasonable time –

(a) visit, interview or examine a patient in private; and

(b) require the production of, and inspect, records relating to the treatment of that patient.

(2) A certificate given for the purposes of this Part shall be in such form as may be prescribed, and an approved practitioner or SOAD giving such a certificate must –

(a) keep a record of the certificate, including the date of its issue; and

(b) provide a copy of the certificate to the patient's responsible medical officer.

46 Regulations as to consent to treatment

(1) The States may by Regulations make further provision as to the application of this Part.

(2) In particular and without derogation from the generality of the power conferred by paragraph (1) –

(a) provision may be made by such Regulations as to –

(i) the administration of electro-convulsive therapy or of such other types of treatment as may be specified, and

(ii) the circumstances in which any treatment may be administered to a child or to a person incapable of giving consent;

and

(b) such Regulations may disapply Article 6(3) of the Capacity Law.

PART 7

MENTAL HEALTH REVIEW TRIBUNAL

47 Establishment of Panel and appointment of qualified persons

(1) The Bailiff shall appoint (in accordance with this Article) and maintain (in accordance with Article 48) a Mental Health Review Tribunal Panel (the "Panel") from which the members of a Mental Health Review

Tribunal convened to carry out any of the Tribunal's functions shall be drawn (in accordance with Article 49 and the Schedule).

(2) The Panel shall consist of such number of qualified persons as in the Bailiff's opinion is necessary for the purpose of carrying out the Tribunal's functions under this Part and the Schedule.

(3) For the purposes of paragraph (2), a qualified person is one who fulfils the requirements of paragraph (4) and –

(a) is legally qualified by virtue of being an advocate or solicitor of the Royal Court of not less than 5 years' standing (a "legal member");

(b) is medically qualified by virtue of being an approved practitioner or a practitioner of equivalent experience and qualification registered as such in a jurisdiction other than Jersey (a "medical member"); or

(c) is otherwise qualified by virtue of his or her experience in administration or application of mental health legislation, or his or her knowledge of social services, or of such other qualification as the Bailiff considers suitable (a "lay member").

(4) Qualified persons shall be persons –

(a) who, in the Bailiff's opinion, have sufficient experience and knowledge to enable them to determine matters falling to be determined by the Tribunal in the exercise of its functions; and

(b) who are not disqualified –

(i) in the case of a person otherwise legally qualified, by falling within any of the descriptions listed in paragraph (5), or

(ii) in the case of a person otherwise medically qualified or qualified as a lay member, by virtue of being an advocate or solicitor of the Royal Court, or by falling within the description in paragraph (5)(a) or (b).

(5) The following are the descriptions of persons disqualified as mentioned in paragraph (4) –

(a) the Bailiff, the Deputy Bailiff or a Jurat;

(b) any other member of the States of Jersey;

(c) any person holding a paid office under the Crown or the States, any employee of the Crown or any States' employee (as defined by Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005[5]);

(d) any person providing services, whether directly or indirectly, to the Minister or the States in relation to the exercise of any function of the Minister or the States under this Law.

(6) The Minister shall establish and pay rates of remuneration of persons appointed under this Article and may defray such expenses of those persons as the Minister may determine.

(7) The Minister may provide, from any administration of the States for which he or she is assigned responsibility, such officers, servants, and accommodation, as the Tribunal may reasonably require.

48 Term of office etc. of qualified persons

(1) The Bailiff may review the constitution of the Panel and may –

(a) appoint additional persons;

(b) re-appoint existing qualified persons; or

(c) remove qualified persons from office on the grounds set out in paragraph (2),

as the Bailiff thinks fit.

(2) The Bailiff may remove from the Panel any qualified person –

(a) on the ground of misconduct by that person; or

(b) where that person is incapable of fulfilling the functions of a member of the Tribunal by reason of mental disorder or physical incapability.

(3) Subject to paragraph (2), the appointment of a qualified person shall cease on whichever of the following occasions is the first to occur –

(a) the appointment or election of that person to a position which would disqualify him or her under Article 47(5)(a) or (b);

(b) at midnight on 31st December in the fifth year following the year of appointment;

(c) at midnight on 31st December immediately following the member's 72nd birthday;

(d) if the person tenders his or her resignation in writing to the Bailiff;

(e) if the person becomes bankrupt;

(f) if, without reasonable excuse, the person absents himself or herself from a sitting of the Tribunal at which the member is appointed to attend in accordance with Part 1 of the Schedule.

(4) Where there is or is discovered to have been any defect with regard to the qualifications of a person, nothing in this Article or Article 47 shall be taken to invalidate a decision or any proceedings of a Tribunal of which that person is or was a member.

49 Establishment and constitution of Tribunal

(1) From among the legal members the Bailiff shall appoint a Chairman, Vice Chairman and such number of members as the Bailiff considers necessary properly to discharge the functions of the Tribunal.

(2) Part 1 of the Schedule has effect with respect to the constitution and procedures of the Tribunal.

(3) The States may by Regulations amend Part 1 of the Schedule.

50 Principal functions of the Tribunal

(1) A patient, a patient's nearest person, or other applicant may apply to the Tribunal for the review of a decision directly affecting the patient and of a kind described in the table in Part 2 of the Schedule.

(2) The principal functions of the Tribunal shall be to determine –

(a) applications made under this Article and in accordance with Part 2 of the Schedule; and

(b) references made by the Minister or the Attorney General under Article 51.

(3) The Tribunal shall also discharge such other functions as are conferred upon it by or under this Law or by any other enactment.

(4) In paragraph (1) "applicant" includes any person (not being a patient or the patient's nearest person) mentioned in the second column of the table in Part 2 of the Schedule.

51 Reference to Tribunal by Minister or Attorney General

Where a patient is liable to be detained under Part 3 or is subject to guardianship under Part 4, the Minister or the Attorney General may, if he or she thinks fit, refer that patient's case to the Tribunal and the Tribunal shall deal with any such reference as if it were an application by the patient made under Article 50.

52 Directions which may be given by the Tribunal

(1) Where the application before the Tribunal concerns a patient admitted for assessment, the Tribunal may in any case direct that the patient be discharged, and shall so direct unless the Tribunal is satisfied that –

(a) the patient is then suffering from mental disorder of a nature or degree which warrants the patient's detention in an approved establishment for assessment (or for assessment followed by treatment) for at least a limited period; and

(b) it is necessary that the patient should continue to be detained –

(i) in the interests of the patient's health or safety, or

(ii) for the protection of other persons.

(2) Where the application before the Tribunal concerns a patient admitted for treatment, the Tribunal may in any case direct that the patient be discharged, and shall so direct unless the Tribunal is satisfied that –

(a) the patient is then suffering from mental disorder of a nature or degree which warrants the patient's detention in an approved establishment for treatment; and

(b) it is necessary that the patient should continue to be detained –

(i) in the interests of the patient's health or safety, or

(ii) for the protection of other persons.

(3) Where the application before the Tribunal concerns a patient subject to guardianship, the Tribunal may in any case direct that the patient be discharged, and shall so direct unless the Tribunal is satisfied that –

(a) the patient is then suffering from mental disorder of a nature or degree which warrants the reception of the patient into guardianship; and

(b) it is necessary for the patient to continue to be subject to guardianship –

(i) for the patient's welfare, or

(ii) for the protection of other persons.

(4) In the exercise of its powers under paragraphs (1) to (3) the Tribunal may direct the discharge of a patient on a future date specified in the direction.

53 Visiting and examination of patients

(1) A person entitled under Article 50 or 51 to apply to the Tribunal may authorize a registered medical practitioner to visit the patient at any reasonable time and examine the patient in private, for the purpose of –

(a) advising whether an application to the Tribunal should be made by or in respect of the patient; or

(b) providing information as to the patient's condition for the purposes of such an application.

(2) A registered medical practitioner authorized under paragraph (1) may require the production of and inspect any documents constituting, or alleged to constitute, the authorization for detention of the patient under Part 2, and any records or other documents relating to the patient's treatment.

54 Appeals from Tribunal

(1) A person aggrieved by a decision of the Tribunal may appeal to the Court on a point of law.

(2) The power to make rules of court under the Royal Court (Jersey) Law 1948[6] shall extend to making rules for the purpose of the conduct of, and proceedings in, appeals under paragraph (1).

(3) On an appeal under paragraph (1) the Court may –

(a) quash the decision of the Tribunal;

(b) affirm the decision of the Tribunal;

(c) give any direction which the Tribunal has power to give; or

(d) refer the matter back to the Tribunal for reconsideration.

(4) No decision of the Tribunal shall be invalidated solely by reason of procedural irregularity, unless that irregularity was such as to prevent a party to the appeal from presenting his or her case fairly before the Tribunal.

PART 8

CRIMINAL JUSTICE: INCAPACITY OF DEFENDANT

55 Application and interpretation of Part 8

(1) This Part applies where in any proceedings, whether on accusation or trial, it appears to the court that a person charged with any act (the "defendant") is, because of –

(a) mental disorder; or

(b) inability to communicate,

incapable of participating effectively in the proceedings, and any reference in this Part to incapacity shall be construed accordingly.

(2) For the purposes of this Part –

(a) a reference to the "court" is to whichever court has jurisdiction, in a particular case, to try the proceedings in question, and includes (for the avoidance of doubt) the Magistrate's Court, the Youth Court, or the Royal Court, as the case may be;

(b) a reference to "medical evidence" is to the evidence, in relation to a particular matter, of at least 2 registered medical practitioners who, in the opinion of the court, have appropriate experience in the diagnosis or treatment of such a matter;

(c) "participating effectively" includes, but is not limited to –

(i) entering a plea, and

(ii) understanding the nature and significance of the proceedings or any stage of the proceedings; and

(d) "special measures" may include, but are not limited to, the provision of translators or interpreters or of mechanical or electronic aids to hearing or understanding.

56 Power to adjourn proceedings where defendant apparently incapable

(1) Where it appears to the court that a defendant is incapable of participating effectively in proceedings, the court may adjourn the proceedings to enable determination of the issue of the defendant's incapacity.

(2) Subject to paragraph (3), the determination of that issue –

(a) shall be held as soon as possible and at such time and place as the court may direct; and

(b) may be held in the absence of the defendant if, having regard to the medical evidence, it is impracticable or inappropriate to bring the defendant before the court.

(3) Where the court considers that it is expedient and in the interests of the defendant to do so, the court may postpone consideration of the issue of incapacity until any time up to the opening of the case for the defence (and if, before the issue falls to be determined, the defendant is acquitted, the issue need not be determined).

57 Determining issue of incapacity

(1) The court determining an issue as to the defendant's incapacity shall have regard (so far as each of the following factors is relevant in the particular case) to the ability of the defendant –

(a) to understand the nature of the proceedings so as to be able to instruct his or her lawyer and to make a proper defence;

(b) to understand the nature and substance of the evidence;

(c) to give evidence on his or her own behalf;

(d) to make rational decisions in relation to his or her participation in the proceedings (including entering any plea) which reflect true and informed choices on his or her part.

(2) The issue as to the defendant's incapacity shall be determined on the balance of probabilities.

(3) For the purpose of determining the issue of incapacity –

(a) the court must obtain, and have regard to, medical evidence on that issue; and

(b) the court shall have all such powers to make orders in respect of the defendant under this Part as it has in respect of a defendant under Articles 61(1) and 62(1).

(4) Where the court determines that the defendant is incapable but considers that the defendant's incapacity might be alleviated by special measures to enable the defendant to participate effectively in the proceedings –

(a) the court shall have regard to whether it is practicable to put in place such special measures; and

(b) if the court considers it is practicable to do so, shall direct that such special measures are put in place.

58 Result of finding of incapacity

(1) This Article applies where, on the hearing of an issue as to a defendant's incapacity, the court determines that the defendant is incapable (even if special measures were to be put in place) of participating effectively in proceedings.

(2) Where this Article applies, the court –

(a) may adjourn the proceedings for a further specified period of no more than 6 months, for the purpose of enabling the defendant to receive treatment; and

(b) if it does so, may do anything which it has power to do under Article 63.

(3) Where this Article applies and –

(a) the court does not adjourn the proceedings under paragraph (2); but

(b) the court is satisfied, having regard to the medical evidence, that the defendant is and will remain (so far as reasonably foreseeable) incapable of participating effectively in proceedings,

the proceedings adjourned under Article 56(1) shall not proceed further and the court may deal with the defendant only –

(i) by releasing him or her unconditionally; or

(ii) as provided by Article 59.

(4) The States may by Regulations amend the maximum period, in paragraph (2)(a), for which proceedings may be adjourned under that paragraph.

59 Final orders where defendant incapable

(1) This Article applies where Article 58 applies and where, having regard to the interests of justice and to –

(a) the evidence already given, and such further evidence as may be given, for the purpose of determining whether the defendant did the act with which he or she is charged; and

(b) any further matters as to which provision is made by Regulations under paragraph (3),

the court finds that the defendant did in fact do the act with which he or she is charged.

(2) Where this Article applies, the court may make in respect of the defendant –

(a) a treatment order (with or without restriction) under Article 65;

(b) a guardianship order under Article 66; and

(c) such further orders as the States may by Regulations provide or specify.

(3) The States may by Regulations make further provision as to the scope and exercise of the court's discretion under this Article, and in particular (but without derogation) may make provision as to –

(a) facts or matters which must be proved to the court, and the standard of proof;

(b) the nature of evidence to be given, the persons who may give evidence, and the procedures which must be followed, for the purpose mentioned in paragraph (1)(a); and

(c) such other matters as the court must take into account.

PART 9

CRIMINAL JUSTICE: POWERS OF COURT IN RELATION TO ACCUSED PERSONS SUFFERING MENTAL DISORDER

60 Interpretation and application of Part 9

(1) In this Part –

(a) a reference to the "court" –

(i) in Articles 61 to 63, has the same meaning as in Part 8,

(ii) in Articles 64 to 66, is to the Magistrates' Court or the Royal Court,

(iii) in Articles 67 to 69, is to the Royal Court only;

(b) a reference to an offence punishable with imprisonment includes reference to an offence for which a person under 21 years of age may be sentenced to youth detention under the Criminal Justice (Young Offenders) (Jersey) Law 1994[7] or the Criminal Justice (Young Offenders) (Jersey) Law 2014[8], as the case may be; and

(c) "place of safety" has the meaning given to that expression by Part 5, but also includes (without qualification) a prison;

"prison" has the meaning given by Article 1(1) of the Prison (Jersey) Law 1957[9].

(2) The powers conferred by Articles 61 to 63 may be exercised in relation to a defendant who –

(a) is not subject to any order made by any court requiring the person's detention in custody, but is awaiting proceedings before a court for an offence punishable by that court with imprisonment; or

(b) has been convicted by the court of any offence punishable with imprisonment.

(3) The powers conferred by Articles 64 to 66 may be exercised in relation to a defendant who is convicted by the court of an offence punishable with imprisonment, the sentence for which is not fixed by law.

(4) The powers conferred by Article 67 may be exercised in relation to a defendant who is convicted by the court of an offence punishable with imprisonment, the sentence for which is fixed by law.

(5) Article 72 may apply in relation to any defendant.

(6) Where a court makes an order in exercise of its functions under Articles 62 to 65 or 71(3) –

(a) the court may further and additionally order that the defendant be conveyed to the approved establishment in question within a period of 7 days beginning with the making of the order;

(b) the managers of that establishment shall admit the defendant within that period and detain the defendant in accordance with the relevant provisions of this Part; and

(c) unless the court orders otherwise, the provisions of Article 25 shall apply in relation to a person detained under this Part as they apply in relation to a person liable to be detained under Part 3.

61 Remand on bail for report

(1) A court may remand the defendant on bail for the purpose of obtaining a report on the defendant's mental condition and in doing so may order that the person attend at an approved establishment, at such times and upon such conditions as the court may specify, to enable the preparation of such a report.

(2) If a defendant remanded under paragraph (1) fails to comply with the order, the defendant may be arrested without warrant by any police officer and after being arrested shall be brought as soon as possible before the court which remanded the defendant.

(3) The court may deal with a defendant brought before it under paragraph (2) in any way in which a court could have dealt with him or her if that defendant had not been remanded under this Article.

62 Remand to approved establishment for report

(1) Where the court is satisfied of the matters specified in paragraph (2) and is of the opinion –

(a) that the defendant would not comply with an order under Article 61; or

(b) that if the defendant were remanded on bail under that Article, it would otherwise be impracticable for a report to be prepared on the defendant's mental condition,

the court may remand a defendant to a specified approved establishment for the purpose of obtaining such a report.

(2) The power conferred by paragraph (1) may not be exercised unless the court is satisfied –

(a) on the written or oral evidence of 2 registered medical practitioners, at least one of whom is an approved practitioner, that there is reason to suspect that the defendant is suffering from mental disorder; and

(b) on the written or oral evidence of the approved practitioner who would be responsible for making the report, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 7 days of the date of the order,

and if the court is so satisfied it may give directions for the conveyance and admission of the defendant to the establishment, and for his or her detention in the establishment or in a place of safety pending the admission.

(3) If it appears to the court which remanded a defendant under this Article that, on the written or oral evidence of the approved practitioner responsible for making the report, a further remand is necessary for completing the assessment of the defendant's mental condition, the court may further remand the defendant –

(a) having regard to the limits on such further remand in paragraph (4); and

(b) without the defendant's being brought before the court, if the defendant is represented by an MHA who is given an opportunity to be heard.

(4) A defendant shall not be remanded or further remanded under this Article for more than 28 days at a time or for more than 26 weeks in all, and the

court may at any time terminate the remand if it appears appropriate to the court to do so.

(5) A defendant remanded under this Article is entitled –

(a) to obtain, at his or her own expense, an independent report from a medical practitioner chosen by the defendant; and

(b) on the basis of any such report, to apply to the court for the remand to be terminated.

(6) If a defendant remanded under this Article absconds from the approved establishment or while being conveyed to or from that establishment or any place of safety, the defendant may be arrested without warrant by any police officer and after being arrested shall be brought as soon as possible before the court which remanded the defendant.

(7) The court may deal with a defendant brought before it under paragraph (6) in any way in which a court could have dealt with him or her if that defendant had not been remanded under this Article.

63 Remand to approved establishment for treatment

(1) A court may remand a defendant to a specified approved establishment for the purpose of treatment.

(2) The power conferred by paragraph (1) may not be exercised unless the court is satisfied –

(a) on the written or oral evidence of 2 registered medical practitioners, at least one of whom is an approved practitioner, that there is reason to suspect that the defendant is suffering from mental disorder of a nature or degree which makes it appropriate for the defendant to be detained in an approved establishment for treatment; and

(b) on the written or oral evidence of the responsible medical officer, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 7 days of the date of the order,

and if the court is so satisfied it may give directions for the conveyance and admission of the defendant to the establishment, and for his or her detention in the establishment or in a place of safety pending the admission.

(3) If it appears to the court which remanded a defendant under this Article that, on the written or oral evidence of the approved practitioner responsible for making the report, a further remand is necessary for completing the defendant's treatment, the court may further remand that person –

(a) having regard to the limits on such further remand in Article 62(4) as applied by paragraph (4); and

(b) without the defendant's being brought before the court, if the defendant is represented by an MHA who is given an opportunity to be heard.

(4) Paragraphs (4) to (7) of Article 62 shall have effect as though a remand under this Article were a remand under Article 62.

64 Interim orders

(1) A court may order a defendant to be admitted to and detained in a specified approved establishment for the purpose of assessment of –

(a) the nature and degree of any mental disorder suffered by the defendant; and

(b) the advisability, having regard to such assessment, of making a treatment order in respect of the defendant under Article 65.

(2) The power conferred by paragraph (1) may not be exercised unless the court is satisfied –

(a) on the written or oral evidence of 2 registered medical practitioners, at least one of whom is an approved practitioner, that there is reason to suspect that the defendant is suffering from mental disorder such as may warrant the making of a treatment order under Article 65 in respect of the person;

(b) on the written or oral evidence of the responsible medical officer, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 7 days of the date of the order,

and if the court is so satisfied it may give directions for the conveyance and admission of the defendant to the establishment, and for his or her detention in the establishment or in a place of safety pending the admission.

(3) The court making or renewing an order under this Article shall specify the period of detention which shall be –

(a) on the order being first made, no more than 12 weeks;

(b) on any subsequent renewal of the order, no more than 28 days at a time; and

(c) for no more than 26 weeks in all,

and the court may at any time revoke an order under this Article if it appears appropriate to the court to do so.

(4) Where it appears to the court which ordered the detention of a defendant under this Article that, on the written or oral evidence of the responsible medical officer, a period of further detention is warranted, the court may –

(a) renew the order, having regard to the limits on such renewal in paragraph (3); or

(b) make a treatment order under Article 65 in respect of the defendant,

and in either case may do so without the defendant's being brought before the court, if the defendant is represented by an MHA who is given an opportunity to be heard.

(5) An order made or renewed under this Article shall cease to have effect if –

(a) the court makes a treatment order under Article 65 in respect of the accused person; or

(b) the court decides, on the written or oral evidence of the responsible medical officer, to deal with the defendant in some other way.

(6) Where –

(a) the court gives a direction for the conveyance of the defendant such as mentioned in paragraph (2); and

(b) the defendant absconds while being conveyed to or from an approved establishment or any place of safety,

the defendant may be arrested without warrant by any police officer and after being arrested shall be brought as soon as possible before the court which ordered the detention of that person.

(7) The court may deal with a defendant brought before it under paragraph (6) in any way in which a court could have dealt with that defendant if that defendant had not been detained under this Article.

65 Treatment orders

(1) A court may order that the defendant be admitted to and detained in a specified approved establishment for treatment, where –

(a) the court is satisfied, on the evidence of 2 medical practitioners, at least one of whom is an approved practitioner, that –

(i) the defendant is suffering mental disorder of a nature or degree that warrants admission to and detention in an approved establishment for treatment, and

(ii) the treatment cannot be given to the defendant without such admission and detention;

(b) the court is of the opinion, having regard to all the circumstances including (but without limitation) the nature of the offence and the defendant's character and antecedents, and to other methods of dealing with the defendant, that an order under this Article (a "treatment order") is the most suitable method of disposing of the case; and

(c) the court is satisfied, on the written or oral evidence of the approved practitioner or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 7 days of the date of the order.

(2) Evidence under paragraph (1)(a) –

(a) must be given in writing signed by the practitioners who have personally examined the defendant either jointly or, if separately, at an interval of not more than 5 days; and

(b) must specify the form of mental disorder from which the defendant is found to be suffering.

(3) Where a treatment order is made in respect of a defendant –

(a) the defendant shall be conveyed to the specified approved establishment within the period of 7 days beginning with the date of the order, and in accordance with any directions which may be given by the court for that purpose;

(b) the managers of the establishment shall admit the defendant and thereafter detain and deal with the defendant as a patient in respect of whom a treatment authorization had been made under Part 3; and

(c) the court may not pass sentence of imprisonment, impose a fine or make a probation order in respect of the offence for which the defendant is convicted, but may make any other order which the court has power to make apart from this provision.

66 Guardianship orders

(1) A court may order that the defendant be received into guardianship, where –

(a) the court is satisfied, on the evidence of 2 medical practitioners, at least one of whom is an approved practitioner, that the defendant is suffering mental disorder of a nature or degree that warrants reception into guardianship;

(b) the court is of the opinion, having regard to all the circumstances including (but without limitation) the nature of the offence and the defendant's character and antecedents, and to other methods of dealing with the defendant, that an order under this Article (a "guardianship order") is the most suitable method of disposing of the case; and

(c) the court is satisfied that the authority or person, who would be appointed as guardian by the order, consents to act as guardian in relation to the defendant.

(2) Evidence under paragraph (1)(a) –

(a) must be given in writing signed by the practitioners who have personally examined the defendant either jointly or, if separately, at an interval of not more than 5 days; and

(b) must specify the form of mental disorder from which the defendant is found to be suffering.

(3) Where a guardianship order is made in respect of a defendant –

(a) Part 4 shall apply as though a guardianship authorization had been made in respect of the defendant under that Part; and

(b) the court may not pass sentence of imprisonment, impose a fine or make a probation order in respect of the offence for which the defendant is convicted, but may make any other order which the court has power to make apart from this provision.

67 Directions where sentence of imprisonment to be served in approved establishment

(1) A court may impose any sentence of imprisonment which it has power to impose in respect of the offence in question, and in addition to that sentence may give one or more directions such as are specified in paragraph (3), where the court is satisfied –

(a) on the evidence of 2 medical practitioners, at least one of whom is an approved practitioner, that –

(i) the defendant is suffering mental disorder of a nature or degree that warrants admission to and detention in an approved establishment for treatment, and

(ii) appropriate treatment is available for that defendant in that establishment; and

(b) on the written or oral evidence of the responsible medical officer or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 28 days of the date of the directions.

(2) If the court is satisfied as described in paragraph (1)(b), the court may give such further directions as it thinks fit for the conveyance of the defendant to, and the detention of the defendant in, the establishment or a place of safety pending admission to the establishment.

(3) The directions mentioned in paragraph (1) are that –

(a) the defendant may, instead of being removed to and detained in a prison, be removed to and detained in a specified approved establishment; and

(b) discharge of the defendant from the approved establishment shall be subject to such restrictions as may be specified.

(4) If, within the period of 28 days mentioned in paragraph (1)(b), it appears to the Minister that by reason of an emergency or other special circumstances it is not practicable for the defendant to be admitted to the specified approved establishment, the Minister may direct the admission of the defendant to such other approved establishment as appears to the Minister to be appropriate.

(5) Where the Minister gives a direction under paragraph (4), the Minister must provide a copy of the direction to the court and any person having custody for the time being of the defendant.

(6) Directions given by the court under paragraph (2) or by the Minister under paragraph (4) shall be sufficient authority for –

(a) a police officer or any other person directed to do so to convey the defendant to the approved establishment in question; and

(b) the managers of the establishment to admit the defendant and subsequently deal with the defendant in accordance with this Law.

(7) A prisoner whose sentence of imprisonment has not expired may be discharged from the approved establishment to which he or she has been transferred under this Article –

(a) on an application made to the court by –

(i) the prisoner, or

(ii) the Attorney General;

(b) on the grounds that, in the opinion of the responsible medical officer, it is no longer necessary for the prisoner to be detained in such an establishment by reason of mental disorder.

(8) Where paragraph (7) applies, the prisoner shall be conveyed to prison in accordance with any further directions given by the court for that purpose, and the Governor of the prison shall admit the prisoner and deal with him or her as if paragraphs (1) to (6) of this Article had not applied.

68 Special restrictions on treatment orders

(1) Where a treatment order is made in respect of a defendant and it appears to the court, having regard to the matters in paragraph (2), that it is necessary to do so to protect the public from serious harm, the court may further order that the treatment order shall take effect only with special restrictions, either without limit of time or during such period as the court may specify.

(2) The matters mentioned in paragraph (1) as those to which the court must have regard are –

(a) the nature and gravity of the offence;

(b) the antecedents of the defendant;

(c) the risk of the defendant committing further offences if the defendant remains at liberty.

(3) A further order under paragraph (1) (a "restriction order") shall not be made unless at least one of the practitioners giving evidence for the purposes of Article 65(1)(a) has given evidence orally before the court.

(4) Where a restriction order is made in respect of a defendant –

(a) the defendant shall be conveyed to the specified approved establishment within the period of 7 days beginning with the date of the order and in accordance with any directions given by the court for that purpose;

(b) the managers of the establishment shall admit the defendant and thereafter detain and deal with the defendant as a patient in respect of whom a treatment authorization had been made under Part 3, except that –

(i) leave of absence under Article 24 shall not be granted nor the defendant be transferred under Article 26 without leave of the court, and

(ii) Article 27(1) to (5) shall not apply unless and until the restriction order ceases to have effect in accordance with paragraph (5).

(5) A restriction order shall not cease to have effect unless the court is satisfied, on an application made for the purpose by –

(a) the defendant, or the defendant's nearest person appointed or nominated under Part 2; or

(b) pursuant to a report under paragraph (6), the Attorney General,

that restrictions in respect of the defendant are no longer required to protect the public from serious harm.

(6) During the period for which a restriction order remains in effect, the responsible medical officer must –

(a) examine the defendant at such intervals (not exceeding 12 months) as the court may direct; and

(b) make a report of each such examination to the Attorney General, containing –

(i) the responsible medical officer's opinion as to whether the restriction order should continue in effect, and

(ii) such further particulars as the court may require.

69 Transfer orders

(1) This Article applies in respect of a person detained in a prison (the "prisoner").

(2) The court may order the transfer of a prisoner from a prison to an approved establishment and the detention of the prisoner in that establishment in accordance with paragraph (5), where the court is satisfied –

(a) on the evidence of 2 registered medical practitioners, at least one of whom must be an approved practitioner, that the prisoner is suffering from mental disorder of a nature or degree that makes it appropriate for the prisoner to be detained in an approved establishment for treatment;

(b) that the prisoner should be so transferred and detained in the public interest; and

(c) on the written or oral evidence of the approved practitioner who would be responsible for making the report, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the accused person to that establishment within 7 days of the date of the order.

(3) Subject to paragraph (4), evidence under paragraph (2)(a) –

(a) must be given in writing signed by the practitioners who have personally examined the defendant either jointly or, if separately, at an interval of not more than 5 days; and

(b) must specify the form of mental disorder from which the defendant is found to be suffering.

(4) In a case of emergency the court may waive the requirement for written evidence imposed by paragraph (3)(a) and the evidence of a medical practitioner may be given orally.

(5) Where an order under this Article (a "transfer order") is made in respect of a prisoner –

(a) the prisoner shall be conveyed to the specified approved establishment within the period of 7 days beginning with the date of the order and in accordance with any directions given by the court for that purpose; and

(b) the managers of the approved establishment shall admit the defendant and detain the defendant in accordance with this Article.

(6) Unless –

(a) the prisoner is discharged under paragraph (8); or

(b) the prisoner's sentence of imprisonment expires,

a prisoner who is subject to a transfer order may be detained for a period of 6 months beginning with the date of the order.

(7) A period of detention imposed by a transfer order may be renewed for one further period of 6 months and thereafter for successive periods of 12 months –

(a) on an application made by the Attorney General;

(b) on the grounds that, in the opinion of the responsible medical officer –

(i) the prisoner is suffering from mental disorder of a nature or degree that makes it appropriate for the prisoner to be detained in an approved establishment for treatment, and

(ii) the prisoner should continue to be so detained in the public interest.

(8) A prisoner whose sentence of imprisonment has not expired may be discharged from the approved establishment to which he or she has been transferred under this Article –

(a) on an application made to the court by –

(i) the prisoner, or

(ii) the Attorney General;

(b) on the grounds that, in the opinion of the responsible medical officer, it is no longer necessary for the prisoner to be detained in such an establishment by reason of mental disorder.

(9) Where paragraph (8) applies, the prisoner shall be conveyed to the prison in accordance with any directions given by the court for that purpose, and the Governor of the prison shall admit the prisoner and deal with the prisoner as if no transfer order in respect of him or her had been made.

70 Special provisions where patient sentenced to imprisonment

(1) Paragraph (2) applies where a patient who –

(a) is liable to be detained by virtue of an assessment authorization or treatment authorization; or

(b) is subject to guardianship by virtue of a guardianship authorization,

is detained in custody, pursuant to an order or sentence of any court in Jersey, for a period (or successive periods in the aggregate) exceeding 6 months.

(2) Where this paragraph applies, the application mentioned in paragraph (1)(a) or (b) shall cease to have effect at the end of the period mentioned in that paragraph.

(3) Where a patient to whom paragraph (1)(a) or (b) applies is detained in custody, but the application in question does not cease to have effect under paragraph (2) –

(a) if (apart from this paragraph) the patient would cease to be liable to be detained or to be subject to guardianship on or before the day on which the patient is discharged from custody, the patient shall not cease to be so liable or so subject until the end of that day; and

(b) in any case, Articles 25 and 28 shall apply to the patient upon his or her discharge from custody as if the patient were absent without leave on the day of the discharge.

71 Committal to Royal Court for making of orders

(1) This Article applies in respect of a defendant who is convicted by a court other than the Royal Court of an offence punishable with imprisonment.

(2) Where this Article applies, if –

(a) a court, other than the Royal Court, is satisfied as to the matters in Article 65(1)(a) and (c), as it would be required to be satisfied were the court to consider making a treatment order under that Article; and

(b) it appears to the court, having regard to the matters in Article 68(2), that if a treatment order were made in the case it should take effect with special restrictions,

the court shall commit the defendant, in custody or as described in paragraph (3), to be dealt with by the Royal Court.

(3) The court may by order direct the defendant to be admitted to an approved establishment and to be detained there until the case can be dealt with by the Royal Court, and may further give directions for the conveyance of the defendant from that establishment to attend the Royal Court.

(4) Where a defendant is committed to the Royal Court under this Article, the Royal Court shall have all such powers to deal with the defendant under this Part as it would have if the defendant had been convicted before it, and –

(a) in particular the Royal Court may, if it would have had power to do so upon conviction of the defendant before it under Article 65 –

(i) make a treatment order in respect of the defendant, and

(ii) if it thinks fit and having regard to the matters in Article 68(2), make a further order that the treatment order shall take effect with special restrictions; and

(b) further, the Royal Court may deal with the defendant in any other manner in which the court committing the defendant could have dealt with him or her.

72 Special verdicts

(1) Paragraph (2) applies in any proceedings, whether or not a determination of incapacity has been made under Part 8 in respect of the defendant.

(2) Where the court finds that –

(a) the defendant carried out the act alleged; but

(b) at the time of carrying out the act, the defendant was suffering from mental disorder to such a substantial degree that he or she ought not to be held criminally responsible for doing so,

the court shall record a special verdict to that effect and may either acquit the defendant or make such an order as it has power to make under Article 59.

PART 10

SAFEGUARDING: OFFENCES AGAINST THOSE IN RECEIPT OF CARE ETC.

73 Offence of wilful neglect

(1) It is an offence for the managers or any member of staff of an approved establishment to ill-treat or wilfully neglect –

(a) a patient for the time being detained or receiving treatment for mental disorder in the approved establishment;

(b) on the premises of which the establishment forms part, a patient receiving treatment for mental disorder as an out-patient; and

(c) any other person for the time being under this Law in the care or custody of the establishment or of the mental health professional.

(2) It is an offence for any individual to ill-treat or wilfully neglect –

(a) a patient who is suffering from mental disorder and is for the time being subject to the individual's guardianship; and

(b) any person who is otherwise in the individual's care or custody whether by virtue of any legal or moral obligation or otherwise.

(3) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 5 years and a fine.

74 Sexual offences: prohibited acts

(1) It is an offence for any person ("A") to commit an act described in paragraph (2) (in this Article and in Articles 75 and 76, a "prohibited act") with, towards, or in relation to, any other person ("B") where A knows, or could reasonably be expected to know, that –

(a) B is suffering from any mental disorder (including any learning disability); and

(b) because of that disorder or for reasons related to it, B is unable to refuse involvement in the act.

(2) For the purposes of paragraph (1), A commits a prohibited act if –

(a) A intentionally touches B, where the touching is sexual;

(b) A intentionally causes or incites B to engage in an act which is sexual;

(c) A intentionally engages in an act which is sexual, for the purpose of obtaining sexual gratification, and does so –

(i) when B is either present or in a place from which A can be observed by B,

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in the act; or

(d) for the purpose of obtaining sexual gratification, A intentionally causes B to watch a third person engaging in an act which is sexual, or to look at an image of any person engaging in such an act.

(3) For the purposes of paragraph (2) –

(a) touching includes touching –

(i) with any part of the body,

(ii) with anything else, and

(iii) through anything; and

(b) touching or any other act is sexual if a reasonable person would consider that –

(i) whatever the circumstances or any person's purpose in relation to the act, it is because of its nature sexual, or

(ii) because of the nature of the act it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both), it is sexual.

(4) For the purposes of paragraph (1)(b), B shall be deemed to be unable to refuse involvement in an act if –

(a) B lacks the capacity to choose whether or not to agree to such involvement (whether because B does not understand the nature of the act, or for any other reason); or

(b) for any reason, B is unable freely to communicate such a choice to A.

75 Sexual offences: relationship of care

(1) It is an offence for any person ("A") –

(a) to commit a prohibited act with, towards or in relation to any other person suffering from a mental disorder ("B"); or

(b) to procure by inducement, threat, or deception, B's participation in a prohibited act,

where A is involved in B's care in any way described in paragraphs (3) or (4).

(2) Where A is involved in B's care for the purposes of paragraph (1), in determining whether an offence has been committed under that paragraph it is to be presumed that, unless the contrary is shown, A knows, or could reasonably be expected to know, that B has a mental disorder.

(3) A is involved in B's care for the purposes of paragraph (1) if –

(a) B is accommodated and cared for in an approved establishment or any other residential or nursing home; or

(b) B is a patient for whom care services are provided by any public or private health care provider, whether in B's home or elsewhere,

and A performs functions, in the course of A's employment or of services provided by A, which bring or are likely to bring A into regular face-to-face contact with B.

(4) A is involved in B's care for the purposes of paragraph (1) if –

(a) A is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder; and

(b) A is likely to have regular face-to-face contact with B.

(5) It is a defence for A, being charged with an offence under paragraph (1), to prove that, at the time of the prohibited act –

(a) B was aged 16 years or over; and

(b) A was lawfully married to, or in a civil partnership with, B.

76 Sexual offences: coercion

It is an offence for any person ("A") to procure by inducement, threat, or deception the participation of any other person ("B") in a prohibited act where A knows, or could reasonably be expected to know, that B is a person suffering from a mental disorder.

77 Sexual offences: penalties

(1) A person guilty of an offence under Article 74(1) or Article 76 is liable –

(a) in the case of a prohibited act described in Article 74(2(a) or (b) –

(i) where the act involved penetration, to imprisonment for life, or

(ii) where the act did not involve penetration, to imprisonment for a term of 14 years;

(b) in the case of a prohibited act described in Article 74(2)(c) or (d), to imprisonment for 10 years.

(2) A person guilty of an offence under Article 75(1) is liable –

(a) in the case of a prohibited act described in Article 74(2)(a) or (b) –

(i) where the act involved penetration, to imprisonment for a term of 14 years, or

(ii) where the act did not involve penetration, to imprisonment for a term of 10 years;

(b) in the case of a prohibited act described in Article 74(2)(c) or (d), to imprisonment for a term of 7 years.

(3) For the purposes of this Article, "penetration" means penetration –

(a) of the anus, mouth or vagina of one of the participants in the prohibited act;

(b) by a part of the body of the other participant, or by anything else.

PART 11

SAFEGUARDING: PATIENTS' RIGHTS

78 Information to be given to patients

(1) Where a patient is detained or taken into guardianship under this Law, the managers of the approved establishment in which the patient is detained or, as the case may be, the Minister must, as soon as practicable after the detention or guardianship commences, take all such steps as are reasonable to ensure that the patient understands –

(a) under which of the provisions of the Law the patient is detained or taken into guardianship, and the effect of those provisions;

(b) what rights of access to independent advocacy, representation and review are available to the patient under this Law;

(c) the effect, so far as relevant in that patient's case, of Articles 7, 13, 27, Part 6, Articles 79, 81 to 84, 85 and 91; and

(d) such other matters as may be required by Regulations, or a code of practice, under this Law.

(2) The managers or, as the case may be, the Minister must further (unless the patient requests otherwise) take such steps as are practicable to provide the patient's nearest person, at the same time as or within a reasonable time of giving information to the patient under paragraph (1), with the same information or, if in writing, with a copy of that information.

(3) The steps to be taken under paragraph (1) may include giving the information required either in writing or orally, or by both means, having regard in particular to the patient's ability to understand the information, however given.

79 Independent mental health advocates: regulations

(1) This Article applies to make provision for the appointment of independent mental health advocates ("MHAs") to act in relation to and on behalf of qualifying patients.

(2) The States may by Regulations require the Minister to make reasonable arrangements –

(a) for the appointment of independent mental health advocates ("MHAs") in accordance with further provision to be made by the Regulations of the kind described in paragraph (3)(a) to (e); and

(b) as to the role and conduct of MHAs, in accordance with provision to be made by the Regulations of the kind described in paragraphs (3)(f) and (g), (4) and (5).

(3) Regulations under this Article may in particular make provision including (but not limited to) provision as to –

(a) the qualifications required of a person to be appointed;

(b) the circumstances in which a person may so act;

(c) the procedure for appointment and terms and conditions of appointment;

(d) the circumstances in which the appointment may end or be terminated and the formalities for doing so;

(e) as to the nature and level of payment (whether by way of fees, or reimbursement of expenses) which may be made to MHAs;

(f) steps to be taken to ensure that qualifying patients and their nearest persons are aware of the availability of the services of MHAs; and

(g) matters in which MHAs may help qualifying patients, and the powers which MHAs may exercise for the purpose of giving such help.

(4) Matters for the purpose of paragraph (3)(g) include in particular –

(a) help to be given to qualifying patients in obtaining information about, and understanding –

(i) applicable and relevant provisions of this Law, with particular regard to the rights of a patient under it, and

(ii) the nature, effects of, and basis (both legal and medical) for any treatment or proposed treatment; and

(b) help to be given to qualifying patients as to the proper exercise of those rights.

(5) Powers for the purpose of paragraph (3)(g) include in particular –

(a) the power to visit and interview patients in private;

(b) the power to visit and interview any person professionally concerned with the treatment of any patient, and the manner of its exercise;

(c) the power to require disclosure and inspection of records relating to patients (whether held by approved establishments, by the Minister or authorized officers), and the circumstances and manner of the exercise of such power (including, for the avoidance of doubt, provision as to circumstances in which a patient may object to disclosure).

(6) In this Article –

"qualifying patient" means –

(a) a patient liable to be detained in an approved establishment under Part 3; and

(b) a patient subject to guardianship under Part 4; and

"independent" means independent of any other persons professionally concerned with the care or treatment of a qualifying patient.

80 Forgery and false statements

(1) A person who, with intent to deceive –

(a) forges any document required or authorized to be made under or for the purposes of this Law; or

(b) uses, allows any other person to use, or makes or has in his or her possession any document which the person knows to be forged or to so closely resemble any document listed in paragraph (2) as to be calculated to deceive,

is guilty of an offence.

(2) The documents mentioned in paragraph (1)(b) include, in particular and without limitation –

(a) an application under Part 3;

(b) any medical recommendation, report or information required to be made, given or provided under this Law; or

(c) any other document required or authorized to be made under or for any of the purposes of this Law.

(3) A person who –

(a) knowingly makes a false entry or statement in any document listed in paragraph (2); or

(b) with intent to deceive, makes use of such an entry or statement which the person knows to be false,

is guilty of an offence.

(4) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 2 years and to a fine.

81 Provision of patients' allowances

Where it appears to the Minister that a patient in an approved establishment (whether liable to be detained under Part 3 or not) would otherwise be without resources to meet occasional personal expenses, the Minister may pay to or on behalf of the patient such amount in respect of those expenses as the Minister may think fit.

82 Restrictions on access to electronic media and communications etc.

(1) Access by a patient detained in an approved establishment to electronic media or communications, or to a telephone (including any form of

personal mobile device) may be restricted if, in the opinion of the managers of the establishment, it is necessary to do so –

(a) in the interests of the health or safety of the patient; or

(b) for the protection of other persons.

(2) Restrictions imposed under paragraph (1) may include –

(a) restriction of the ability of a patient to contact a specified person by any means mentioned in that paragraph, where the person has requested such a restriction by notice given in writing to the managers; and

(b) confiscation of any article or device which may be used for the purposes of electronic media or communications.

(3) Where any restriction is imposed under paragraph (1) in respect of a patient's access –

(a) the managers shall, no later than 7 days after it is imposed, give notice in writing of the restriction and of the right to review under Article 84 –

(i) to the patient, and

(ii) where the restriction relates to contact with a specified person as provided by paragraph (2), to that person;

and

(b) the managers shall record in writing the fact and nature of the restriction.

(4) Paragraph (1) shall not apply so as to restrict communications by any means mentioned in that paragraph between a patient and –

(a) the Attorney General;

(b) a member of the States;

(c) a judicial officer of a court, including for this purpose the European Court of Human Rights;

(d) the patient's legal representative;

(e) the patient's guardian;

(f) the patient's nearest person;

(g) an independent mental health advocate;

(h) a police officer;

(i) the Mental Health Review Tribunal; or

(j) any other person such as may be prescribed by Regulations made by the States for this purpose.

83 Restrictions on postal correspondence

(1) A postal packet addressed to a patient detained in an approved establishment may be withheld from the patient if, in the opinion of the managers of the establishment it is necessary to do so –

(a) in the interests of the health or safety of the patient; or

(b) for the protection of other persons.

(2) A postal packet addressed by a patient detained in an approved establishment may be withheld from dispatch by the manager if –

(a) the addressee has given notice in writing to the managers or the responsible medical officer that any communications addressed to the addressee by the patient should be withheld; or

(b) if it appears to the managers that the communication –

(i) would be likely to cause distress to the addressee, or

(ii) might cause danger to any person.

(3) Paragraphs (1) and (2) shall not apply so as to permit restriction of communications by post between a patient and –

(a) the Attorney General;

(b) a member of the States;

(c) a judicial officer of a court, including for this purpose the European Court of Human Rights;

(d) the patient's legal representative;

(e) the patient's guardian;

(f) the patient's nearest person;

(g) an independent mental health advocate;

(h) a police officer;

(i) the Mental Health Review Tribunal; or

(j) any other person such as may be prescribed by Regulations made by the States for this purpose.

(4) The managers of an approved establishment may inspect and open a postal packet addressed to or by a patient for the purpose of determining whether or not paragraphs (1) or (2)(b) may apply, and for no other purpose.

(5) Where a postal packet is withheld under this Article –

(a) the managers shall, no later than 7 days after the postal packet is withheld, give notice in writing of the fact and of the right to review under Article 84 –

(i) to the patient, and

(ii) where paragraph (2) applies, to the addressee;

and

(b) the managers shall record in writing the fact of, and reason for, the withholding.

(6) In this Article, "postal packet" has the same meaning as in section 27 of the Postal Services Act 2011 of the United Kingdom.

84 Review of restrictions, and offence where restriction unlawful

(1) The patient or, where notice has been given to him or her under Article 83(5)(a), the addressee, may apply to the Mental Health Review

Tribunal, in such form as may be prescribed or in writing substantially to the same effect, for a review of any decision –

(a) under Article 82, to restrict access to communications; or

(b) under Article 83, to withhold a postal packet.

(2) An application under paragraph (1) must be made within the period of 6 months beginning with the date of receipt of notice of the decision of which review is sought.

(3) Upon determining the application the Tribunal may –

(a) uphold the decision; or

(b) quash the decision and give such directions as to the restriction of communication by or with the patient, or as to the disposal of the postal packet (as the case may be) as the Tribunal may think fit.

(4) Except as provided by Articles 82 or 83, it shall not be lawful to restrict –

(a) a patient's access to electronic communications; or

(b) receipt or dispatch of a postal packet by a patient,

and a person who does so unlawfully shall be guilty of an offence and liable upon conviction to a fine of level 3 on the standard scale.

PART 12

TRANSFER OF PATIENTS BETWEEN JERSEY AND OTHER JURISDICTIONS

85 Removal from Jersey: role of Tribunal

(1) A patient may not be removed from Jersey pursuant to Articles 86 to 88 except as authorized –

(a) by order of the Court, in which case the Court shall have all such powers as are conferred on the Minister under Articles 86(2), 87(2), 88 and 89; or

(b) by the Minister, with the approval of the Tribunal.

(2) Where the Minister authorizes removal under Article 86 or 87, the Minister must immediately notify the Tribunal and the Tribunal shall review the authorization within the period of 7 days beginning with the date of such notification.

(3) In this Part, reference to a patient is to a patient liable to be detained under Part 3 or pursuant to an order under Part 9.

(4) For the avoidance of doubt the Tribunal shall not have power under this Article or otherwise to review an authorization given under this Part by order of the Court.

86 Removal of patient to another place in the British Islands

(1) The Minister may authorize the removal of a patient from Jersey to another place in the British Islands where it appears to the Minister that –

(a) such removal is in the best interests of the patient;

(b) there is provision in that place for the reception of the patient from Jersey corresponding to Article 89; and

(c) arrangements have been made for the patient's admission in that place.

(2) When authorizing removal under paragraph (1) the Minister may give any directions necessary for the conveyance of the patient to the intended destination in the place mentioned in that paragraph.

(3) Following removal of a patient from Jersey under this Article, the assessment or treatment authorization by virtue of which that patient is liable to be detained shall cease to have effect upon admission of the patient pursuant to the arrangements mentioned in paragraph (1)(c).

87 Removal of patient to another place where no reciprocal arrangements

(1) The Minister may authorize the removal of a patient from Jersey to another place in the British Islands where it appears to the Minister that –

(a) such removal is in the interests of the patient;

(b) there is no provision in that place for the reception of the patient from Jersey corresponding to Article 89 but the patient is ordinarily resident in that place; and

(c) proper arrangements have been made for the removal of the patient to that place, and for the patient's care and treatment there.

(2) When authorizing removal under paragraph (1) the Minister may give such directions as the Minister thinks fit for –

(a) the conveyance of the patient to the intended destination in the place mentioned in that paragraph; and

(b) the detention of the patient in any other place or on board any ship or aircraft until arrival at any specified port or other place in the British Islands.

88 Removal of alien patient

(1) The Minister may authorize the removal of a patient who is an alien where it appears to the Minister that –

(a) such removal is in the interests of the patient; and

(b) that proper arrangements have been made for the removal of the patient to a country or territory outside the British Islands and for the patient's care and treatment there.

(2) When authorizing removal under paragraph (1) the Minister may give such directions as the Minister thinks fit for –

(a) the conveyance of the patient to the intended destination in the place mentioned in that paragraph; and

(b) the detention of the patient in any other place or on board any ship or aircraft until arrival at any specified port or other place in the country or territory concerned.

89 Reception of patient into Jersey

(1) This Article applies where a patient is removed to Jersey from another place in the British Islands under an enactment corresponding to Article 86.

(2) Where this Article applies and the patient is admitted to an approved establishment, this Law shall apply to the patient as if, on the date of admission, the patient had been so admitted pursuant to an application order or direction given under the provision of this Law corresponding to the enactment of the place from which the patient was removed and by virtue of which the patient was liable to be detained in that place.

(3) While being conveyed in Jersey to the approved establishment mentioned in paragraph (1), the patient shall be deemed to be in legal custody.

PART 13

MISCELLANEOUS AND GENERAL PROVISIONS

90 Codes of practice

(1) The Minister must issue a code of practice for the purposes of this Law and in particular (but without limitation) for the guidance of persons, on whom functions are conferred by or under this Law, in carrying out such functions.

(2) A code must include a statement of such principles as the Minister may consider should inform decisions (whether generally or in particular) under this Law, and the statement must address each of the following matters and the weight to be accorded to them –

(a) respect for the wishes and feelings of patients so far as these can reasonably be ascertained;

(b) involvement of patients so far as reasonably possible in determining their own care and treatment;

(c) respect for diversity, including (but without limitation) issues of religion and sexual orientation;

(d) minimal restriction on liberty of patients;

(e) effectiveness of treatment;

(f) respect for the views of patients' carers;

(g) the wellbeing and safety of patients; and

(h) public safety.

(3) In issuing a code the Minister must also have regard to the need to ensure –

(a) the efficient use of resources; and

(b) the equitable distribution of services.

(4) Paragraph (5) applies where it appears to the court or to the Tribunal, when conducting any civil or criminal proceedings, that –

(a) a provision of a code issued under this Article; or

(b) a failure to comply with a requirement of any such code,

is relevant to a question arising in those proceedings.

(5) Where this paragraph applies, the relevant provision or failure must be taken into account in determining the question, but a failure to comply with a code shall not of itself make a person liable to any civil or criminal proceedings.

(6) The Minister may amend a code from time to time as the Minister may see fit, and a code may make, as respects any matter in relation to which it makes provision –

(a) the same provision for all cases, or different provision for different cases or classes of case, or different provision for the same case or class of case for different purposes; and

(b) any such provision either unconditionally or subject to any specified conditions.

(7) Before issuing or amending a code, the Minister must consult such bodies as appear to the Minister to be concerned.

(8) The Minister must publish any code of practice which is for the time being in force in such manner as may appear to the Minister to be appropriate for bringing it to the attention of persons likely to be concerned with or affected by its provisions.

91 Offence of assisting patient to abscond

(1) A person who induces or knowingly assists a patient liable to be detained, or subject to guardianship, under this Law to absent himself or herself without leave from an approved establishment or the custody of his or her guardian (as the case may be) is guilty of an offence.

(2) A person who –

(a) knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under the provisions of Part 5 or Part 9; or

(b) gives, with intent to prevent, hinder or interfere with the patient being retaken into custody or returned to an approved establishment, any assistance to such a patient,

is guilty of an offence.

(3) A person guilty of an offence under this Article is liable to imprisonment for a term of 2 years and a fine.

92 Offence of obstruction

A person who –

(a) refuses to allow the inspection of any premises;

(b) without reasonable cause, refuses to allow the visiting, interviewing or examination of a patient by a person authorized in that behalf by or under this Law;

(c) refuses to produce for the inspection of any such authorized person any document or record duly required by that person; or

(d) otherwise obstructs any such authorized person in the exercise of his or her functions under this Law,

is guilty of an offence and liable to imprisonment for a term of 3 months and a fine of level 3 on the standard scale.

93 Protection for acts done in pursuance of this Law

(1) No liability is incurred by any person in respect of any act done in the discharge or purported discharge of a function conferred on the person by or under this Law.

(2) Paragraph (1) does not apply –

(a) if it is shown that the act in question was done in bad faith, or without due and reasonable care; or

(b) so as to prevent an award of damages made in respect of the act on the ground that the act was unlawful under Article 7(1) of the Human Rights (Jersey) Law 2000[10].

94 Regulations

(1) The States may by Regulations make provision for the purpose of giving full effect to this Law and, in particular but without derogation from the generality of this power, such Regulations –

(a) may make provision for or in respect of any matter that by this Law is required or permitted to be done by Regulations; and

(b) may amend any enactment.

(2) Regulations under this Law may make such transitional, saving, incidental, consequential or supplementary provision as may appear to the States to be necessary or expedient for the purposes of the Regulations.

95 Orders

(1) The Minister may make Orders for prescribing anything which is required or authorized to be prescribed under this Law.

(2) For the purpose of giving full effect to this Law, the Minister may by Order –

(a) prescribe the form of any application, recommendation, report, direction, notice or other document to be made, given or provided under this Law;

(b) prescribe the manner in which any such document as is mentioned in sub-paragraph (a) may be served, and proved in evidence;

(c) prescribe for a register or other records to be kept in respect of patients liable to be detained or subject to guardianship under this Law;

(d) make provision for providing or making available to such patients and their relatives and nearest persons written statements of patients' rights under this Law;

(e) make provision for the determination of the age of any person whose exact age cannot be ascertained by reference to registers kept under the Marriage and Civil Status (Jersey) Law 2001[11];

(f) make provision for enabling functions of a patient's nearest person or guardian to be performed, in such circumstances and subject to such conditions as may be prescribed, by any person authorized to do so by the relative or guardian; and

(g) make provision as to the conditions under which patients may be transferred under Part 12.

(3) Orders under this Law may make such transitional, saving, supplementary and consequential provision as may appear to the Minister to be necessary or appropriate.

(4) The Subordinate Legislation (Jersey) Law 1960[12] applies to Orders made under this Law.

96 Rules of Court

The power to make rules of court under the Royal Court (Jersey) Law 1948[13] includes power to make rules regulating practice and procedure in or in connection with proceedings before the court under this Law and in particular (but without derogation from the generality of this power) to make rules as to –

(a) applications under Articles 11, 12, 67 and 69 (including the hearing and determination of applications otherwise than in open court); and

(b) the visiting and interviewing of patients in private, by or under the direction of the Court.

97 Repeals and saving

(1) The Criminal Justice (Insane Persons) (Jersey) Law 1964[14] and (subject to paragraph (2)) the Mental Health (Jersey) Law 1969[15] are repealed.

(2) Article 43 of the Mental Health (Jersey) Law 1969 (and, so far as necessary for the purposes of that Article, Articles 1, 3, 4 and Part 2 of, and Schedule 2 to that Law) shall continue to have effect until the commencement, if occurring after the commencement of this Law, of Part 4 of the Capacity Law.

98 Citation and commencement

This Law may be cited as the Mental Health (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

SCHEDULE

(Articles 47, 49 and 50)

PART 1

CONSTITUTION AND PROCEEDINGS OF MENTAL HEALTH REVIEW TRIBUNAL

1 Selection of members

The members who are to constitute the Tribunal for the purposes of any proceedings, or any class or group of proceedings, under this Law shall be selected –

(a) from among the persons appointed to the Panel and in accordance with paragraphs 2 and 3;

(b) by –

(i) the Chairman,

(ii) (if the Chairman is not available to act) the Vice Chairman, or

(iii) (if neither the Chairman nor the Vice Chairman is available to act) the Bailiff.

2 Constitution of Tribunal

Each Tribunal selected under paragraph 1 shall consist of at least 3 members comprising –

(a) one legal member (who may be the Chairman, Vice-Chairman or the Bailiff);

(b) one medical member; and

(c) one lay member.

3 Notification of members

The Chairman, Vice-Chairman or (as the case may be) the Bailiff must notify a member selected under paragraph 1, in such manner as may be agreed between the Bailiff and the Chairman for that purpose, of the fact of the selection and of the details of the application or reference which the Tribunal in question is to consider.

4 Conflicts of interest

If a member has any interest in the patient to whom the application or reference relates, the member must as soon as practicable inform the Chairman, Vice Chairman or (as the case may be) the Bailiff of the existence of that interest and shall cease to be eligible to act as a member of the Tribunal hearing the application or reference in question.

5 Proceedings

The Minister may by Order make such rules of procedure as the Minister may think fit in relation to the constitution, proceedings and powers of the Tribunal, and in relation to matters incidental or consequential upon such proceedings, and such rules may (without limitation to the generality of the power conferred by this paragraph) include provision –

(a) as to the manner in which, the means by which, and the period within which proceedings of the Tribunal may be instituted, adjourned, withdrawn or discontinued;

(b) as to the further constitution of the Tribunal, in relation to the consideration of any particular application or class of application;

(c) as to the maximum period which may elapse, following the receipt of an application or reference by the Tribunal, until the commencement of proceedings in relation to that application or reference;

(d) for determining without a hearing, and on the basis of written representations, such matters as may be specified and in such circumstances as may be specified;

(e) for enabling the Tribunal –

(i) to exclude members of the public or any specified class of members of the public from any of the Tribunal's proceedings, and

(ii) to prohibit the publication of reports of its proceedings or of the identity of any person concerned in those proceedings;

(f) as to the regulation of representation before the Tribunal, including representation by persons who are not legally qualified, whether or not in addition to representation by an advocate or solicitor of the Royal Court;

(g) as to the regulation of methods by which information relevant to an application may be obtained by, or provided to, the Tribunal and in particular for authorizing a member of the Tribunal to visit and interview in private any patient concerned in any proceedings;

(h) as to the provision to any applicant or patient concerned in any proceedings of copies of statements, documents or information obtained by or provided to the Tribunal in connection with those proceedings;

(i) restricting the availability of information to the patient or any other person concerned in any proceedings, where to do so is necessary in the interests of the patient or otherwise in the interests of justice;

(j) as to the provision of statements of reasons for the Tribunal's decisions, including the form and content of such statements, and the grounds on which or cases in which such statements may be withheld, where to do so is necessary in the interests of the patient or otherwise in the interests of justice;

(k) as to costs, fees, expenses and allowances (including expenses and allowances which may be provided by the Minister to the members of the Tribunal);

(l) as to the powers of the Tribunal to review its own decisions and to correct omissions and clerical errors;

(m) as to such ancillary powers of the Tribunal which the Minister considers necessary for the purposes of the proper discharge of functions of the Tribunal and of the just disposal of its proceedings; and

(n) as to the Tribunal's obligations of confidentiality, including prescribing circumstances in which information may be disclosed by the Tribunal and the persons to whom it may be disclosed.

6 Offence of disclosure of information

(1) Subject to sub-paragraph (2), a member of the Panel shall not disclose any document or other information –

(a) relating to the business or affairs of any person; and

(b) which is acquired by the member in the course of exercising functions of a member of the Panel.

(2) A disclosure which is otherwise prohibited by paragraph (1) may be made –

(a) with the consent of (or consent lawfully given on behalf of) –

(i) the person to whom the disclosure relates, and

(ii) if different, the person from whom the document or information was acquired;

or

(b) to the extent that the disclosure is necessary –

(i) to enable the member to exercise functions as a member of the Panel,

(ii) in the interests of the investigation, detection, prevention or prosecution of crime, or

(iii) to comply with an order of a court.

(3) A person who makes a disclosure in contravention of paragraph (1) is guilty of an offence and liable to a fine.

PART 2

APPLICATIONS TO THE TRIBUNAL

1 Types of applications and applicants

(1) An application may be made to the Tribunal –

(a) following a decision or other exercise of a power as described in the first column of the following table;

(b) by the patient (including by the patient's nearest person) or another person as described in the second column (the "applicant"); and

(c) within the period described in the third column,

for a review of the decision or exercise of the power in question, and in particular, where the patient is for the time being liable to be detained, for the discharge of the patient.

(2) An application under paragraph (1) shall be made in such form as may be prescribed, or in writing substantially to the same effect.

DECISION OR EXERCISE OF POWER	APPLICANT	PERIOD
Detention under an assessment authorization	The patient to whom the authorization relates	14 days beginning with the day on which notice is given under Article 20(2) that the patient is admitted to an approved establishment
First detention under a treatment authorization	The patient to whom the authorization relates	6 months beginning with the day on which notice is given under Article 20(2) that the patient is admitted to an approved establishment
First renewal of detention under a treatment authorization	The patient to whom the authorization relates	6 months beginning with the day on which the authorization is first renewed
Subsequent renewal of detention under a treatment authorization	The patient to whom the authorization relates	12 months beginning with the day on which the authorization is renewed
Exercise of power to recall from absence	The patient in respect of whom the power is exercised	14 days beginning with the day on which the power is exercised
Detention in custody following absence without leave	The patient who is taken into custody	28 days beginning with the day on which the patient is detained
Reception into guardianship	The patient to whom the guardianship authorization relates	6 months beginning with the day on which the guardianship authorization is made
The making or renewal of a treatment order	The patient to whom the order relates	6 months beginning with the day on which the order is made or renewed
Decision by managers of an approved establishment to withhold a postal packet or the contents of such a packet	The patient A person (other than the patient) by whom a postal packet was sent	6 months beginning with the day on which the applicant receives notice under Article 83(5) that the postal packet has been withheld
Authorization to remove person from Jersey	The Minister	As provided by Article 85(2)

2 Limit on applications, and further interpretation of table

(1) Only one application may be made by the same applicant within a period described in the third column of the table, except where a previous application made by the same applicant under the same provision has been withdrawn.

(2) For the avoidance of doubt, in relation to the first two entries in the table, detention under an authorization includes any detention during the initial period (as defined in Article 20(1)(b)).

1	*P.79/2016*
2	*chapter 20.600*
3	*chapter 20.300*
4	*chapter 20.300*
5	*chapter 16.325*
6	*chapter 07.770*
7	*chapter 08.380*
8	*L.27/2014*
9	*chapter 23.775*
10	*chapter 15.350*
11	*chapter 12.600*
12	*chapter 15.720*
13	*chapter 07.770*
14	*chapter 08.280*
15	*chapter 20.650*