

STATES OF JERSEY



DRAFT CAPACITY AND SELF- DETERMINATION (SUPERVISION OF DELEGATES ETC.) (JERSEY) REGULATIONS 201-

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

STATES GREFFE



Jersey

DRAFT CAPACITY AND SELF-DETERMINATION (SUPERVISION OF DELEGATES ETC.) (JERSEY) REGULATIONS 201-

REPORT

Background

The [Capacity and Self-Determination \(Jersey\) Law 2016](#) (the “2016 Law”) was approved by the States Assembly on 14th September 2016 and is proposed to be commenced later this year, alongside the [Mental Health \(Jersey\) Law 2016](#), together with a series of secondary legislation supporting the implementation of those Laws. The background and objectives to the 2016 Law can be understood from the Report to the proposition for that Law ([P.79/2016](#)).

Part 2 of the 2016 Law makes provision for the appointment of lasting powers of attorney, and Part 4 of the 2016 Law provides for the appointment by the Court of delegates, both with the authority, through the terms of the power of attorney or by Court appointment, respectively, to make decisions on behalf of persons who have lost capacity. The system of court appointed delegates will replace the curatorship system provided for in Article 43 of the [Mental Health \(Jersey\) Law 1969](#) (the “1969 Law”).

In this Report, references to “P” are to the person for whom a delegate is appointed by the Court under Part 4 of the 2016 Law. A ‘donor’ is the donor of a lasting power of attorney made under Part 2 of the 2016 Law.

Article 36 of the 2016 Law provides that the States may by Regulations designate a person or office as having responsibility for –

- (a) supervision of the conduct of delegates and of persons exercising authority under lasting powers of attorney;
- (b) monitoring compliance of delegates with the provisions of the Law and with any specific authority conferred upon particular delegates by the Court or upon particular persons by any lasting power of attorney; and
- (c) investigating complaints against delegates and persons exercising authority under lasting powers of attorney, and, where necessary, drawing such complaints to the attention of the Court.

The 2016 Law also enables the States to make other associated provision, by Regulations, for example as to the investigatory and reporting powers of any person or office designated for the purposes of Article 36(1), i.e. the supervisory function.

The Regulations

These Regulations will designate the Viscount with the responsibility for this supervisory function and will set out the powers that may be exercised by the Viscount in that role. Given the Viscount's existing statutory and customary functions, the Viscount will be well-placed to perform the supervisory function regarding attorneys and delegates appointed for property and affairs matters, which will include, for example, authority for the disposal of the donor's immoveable property. The Viscount will also perform a supervisory function in relation to health and welfare matters and will, in this respect, be supported in that supervisory role by the Health and Social Services Department in the day-to-day supervision of those exercising authority under Parts 2 and 4 of the 2016 Law.

In general terms, explained further below, these Regulations will set out powers for the Viscount with regard to the following –

- (a) A 'reactive' supervision role: To receive complaints concerning the conduct of, or exercise of authority by, delegates and attorneys and investigating those matters, seeking an application to the Royal Court for an appropriate remedy where necessary.
- (b) A 'proactive' supervision role: To undertake reviews of the activities of delegates, for example, for auditing purposes, reporting to the Minister for Health and Social Services and the Court, among others, on attorney and delegate activity and trends in performance of those roles and issuing guidance or reports concerning those matters.
- (c) An 'assistance' supervisory role: To provide supervision to delegates where, on hearing an application for the appointment of a delegate, the Court considers that the delegate will need to be supported in performing that role (the "supervisory" role).

The role of the Viscount in these Regulations will be essential to ensuring that the authority conferred on delegates and attorneys is exercised in accordance with the 2016 Law and the terms of the specific authority. The Viscount's role will also provide a source of redress for those concerned as to the conduct of delegates and attorneys but will also enable support to be provided to delegates appointed by the Court. In certain regards, however, the Viscount's supervisory role will be limited: specifically, the arrangement between an attorney and a donor under a lasting power of attorney is a private one which, other than registration and form requirements under Part 2 of the 2016 Law will otherwise be a means by which a person can make provision for their future in a way that involves little involvement with public bodies or the legal system. In this regard, limitations on the supervisory reach of the Viscount seeks to respect the autonomy of these arrangements. Above all, the role of the Viscount will safeguard the interests those who lack capacity to make decisions on their own behalf.

The role of the Viscount in this regard is similar in nature to the role of the Office of the Public Guardian in England under the Mental Capacity Act 2005, the powers of which are set out in the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

The 'reactive' supervisory role

The Viscount will have powers to receive complaints and representations about the conduct of delegates and attorneys and the exercise of the authority conferred on those persons by a donor or the Court (see Regulation 3). On receiving complaints or representations, and filtering out those which are considered to be vexatious, the

Viscount will have powers to commence and investigation and request documents, reports and other information from delegates and attorneys, in addition to powers of visiting and interviewing (see Regulations 3 and 5). The purpose of this aspect of the role, and the powers associated with it, is to ensure that an attorney or delegate is properly performing the function conferred on them but also to ensure that, in doing so, they are not going beyond the scope of their authority. It will involve the Viscount in ensuring that the terms of any authority, for whatever matters it concerns, is respected and complied with. By way of example: the Viscount might receive a complaint from a person, perhaps a family member, that a delegate appointed to manage a person's property and affairs failed to make a decision as to the disposal of property in accordance with the terms of the authority conferred on him, or, in the health and welfare sphere, that a delegate has failed to properly make a decision as regards care arrangements. The Viscount might receive a complaint from an attorney that another attorney purported to make a decision as regards a matter covered by a lasting power of attorney in circumstances where the donor stipulated that the attorneys should act jointly.

It is important to appreciate that the role of the Viscount in this regard is specific to compliance with the 2016 Law and these Regulations. Although the Viscount will, in performing the supervisory role, be cognisant of such matters, any safeguarding concerns, for example, in relation to the abuse of those who lack capacity, will be escalated to the relevant authorities, as they would be existing arrangements around mental health services.

Having undertaken an investigation (in which the Viscount may such persons as considered necessary, in particular the Health and Social Services Department in the case of health and welfare matters (see Regulation 5(7)¹), if the Viscount determines that there are sufficient grounds for seeking a remedy from the Court, the Viscount may make an application to the Court for the exercise of the Court's powers under Parts 2 and 4 of the 2016 Law (see Regulation 7). The Viscount will, in bringing applications to the Court, request that the Attorney General makes such an application (note that the Attorney General has the power to make applications to the Court as regard, among other things, the misconduct of a curator – that role will continue, in support of the Viscount, in the case of delegates and attorneys).

The 2016 Law provides for a number of 'sanction' or 'regulation' powers for the Court as regards delegates and attorneys and the Viscount, or the Attorney General by referral, may make an application to the Court for the exercise by the Court of these powers. Those powers include –

- (a) With regard to delegates –
 - (i) for further orders and directions as the Court thinks necessary or expedient in connection with an order or appointment of a delegate under Article 24(2) of the 2016 Law, including (where the Court is satisfied that it is in P's best interests to do so) varying or discharging any previous order (Article 24(5) of the 2016 Law). That might include, for example, imposing a financial limit on the delegate's authority or the appointment of a second delegate with whom the original delegate is required to act jointly (see Article 34(4) and (6) of the 2016 Law);

¹ Consultation with HSSD in this regard would be conducted through the Mental Health Law Administrator.

- (ii) for the revocation of the appointment of a delegate or variation of the powers conferred on a delegate (Article 24(6) of the 2016 Law) (for example, prohibiting certain transactions to be carried out by the delegate);
- (iii) for the giving of security to the Attorney General or the Judicial Greffier for the due discharge of the delegate's functions (see Article 34(8)(a) of the 2016 Law – this might be a Court sanction where the delegate has failed to perform a function but, rather than remove the delegate, the Court wishes to secure the performance of that function in this manner);
- (iv) for the provision of regular reports by the delegate to the Viscount or the Court with regard to the delegate's performance of his role (see Article 34(8)(b) of the 2016 Law) – this might be ordered in connection with other sanctions by the Court, e.g. the imposition of a financial limit, if the Court is concerned about the ongoing performance of the delegate).

It should be noted that these 'regulatory' powers of the Court are in addition to other statutory powers of the Court under Part 4 of the Law, which the Court may exercise in relation to the appointment of a delegate, i.e. the powers in Articles 25, 27 to 32 of the 2016 Law. These powers might be exercised by the Court in conjunction with its 'regulatory' powers noted above; for example, if the Court determines that a delegate's appointment must be revoked, but a specific decision needs to be made on behalf of P, it can remove the delegate under Article 24(6) and then make a decision on behalf of P, under Article 24(2)(a) (the application for the exercise of that power being made by the Viscount under Article 25(2)). Note also that the Article 24 'regulatory' powers are without prejudice to or derogation from the general jurisdiction of the Court, and the Court has the power to act of its own motion in these matters (Article 24(9) of the 2016 Law). The Court may, therefore, be asked to make other orders or directions not specifically provided for in the Law, on an application made by the Viscount (or the Attorney General). These might include a declaration as to whether the delegate should continue in the role (and which might then prompt the Court to order that the delegate's appointment is revoked), or the Court might require the reimbursement of funds by a delegate such as the return of excessive fees or other payments made to a delegate.

(b) With regard to attorneys –

- (i) for the revocation (or part-revocation) of an instrument conferring a lasting power of attorney, if the donor lacks capacity to do so and the Court is satisfied that a person on whom authority is conferred by a lasting power of attorney has behaved, is behaving, or proposes to behave in a way which contravenes the authority in the power of attorney or is otherwise not in P's interests (see Article 19(3)(b) and (4) of the 2016 Law);
- (ii) for the determination of any question as to the meaning or effect of a lasting power of attorney or any instrument purporting to confer authority by a lasting power of attorney (see Article 20(1) of the 2016 Law) or for directions with respect to a decision which is within the authority conferred on A by a lasting power of attorney, if P lacks capacity to make the decision (see Article 20(2)(a) of the 2016 Law);

- (iii) for the provision of reports or accounts by an attorney and the production of records kept by an attorney for the purpose of such reports or accounts (see Article 20(2)(b)(i) of the 2016 Law) and the production of information, documents or any other things, which are within an attorney's possession as a result of the role under the lasting power of attorney (see Article 20(4) of the 2016 Law).

The Regulations set out other powers for the Viscount in association with this element of the supervisory role: a power to request final reports from delegates and attorneys on the occurrence of certain events such as the death of P (see Regulation 6), a power to share information for supervisory purposes (see Regulation 8), receiving reports from persons required by the Court to undertake specific transactions on behalf of a person who has lost capacity as to the performance of that transaction (see Regulation 9), and the power to continue an investigation into a delegate or attorney after the death of P or the donor (see Regulation 10).

The 'proactive' supervisory role

The Viscount's 'proactive' supervisory role will enable the review of activities of delegates and attorneys for the purposes of the assessment of the functioning of delegate and attorney roles generally, for auditing purposes and reporting into the Court and the Minister, for example (see Regulation 12). In addition to reporting in this respect, the Viscount will also have the power to issue guidance to delegates and attorney intended to assist those individuals, or classes of individuals, in performing their functions under the 2016 Law. The Judicial Greffe will also, on a more general level, provide guidance to attorneys and delegates in the performance of their roles.

The 'assistance' supervisory role

The Regulations will enable the Viscount to provide general or enhanced supervision to delegates (see Regulation 14). A decision that supervision is required would be made by the Court on the appointment of a delegate under Regulation 24. Supervision needs will be determined on a case-by-case basis, but it is expected that supervision would be imposed in exceptional cases involving lay-delegates.

Where the Court determines that supervision is required, a supervisory fee, to be prescribed by Order, will be payable by the delegate from P's assets (see Regulation 15), to which there will be exemptions for those in receipt of a qualifying benefit or otherwise of limited means (see Regulation 15(5)–(7)). Supervision will not be imposed in the case of attorneys: the appointment of an attorney by a donor is a private arrangement which, although necessitating registration in the Judicial Greffe, should, in the absence of concerns warranting an investigation, remain beyond intrusion by public authorities. The supervisory role of the Viscount in this regard is similar to that performed by the Public Guardian in England with respect to deputies appointed by the Court of Protection.

As in the UK, it is intended that there will be 2 levels of supervision which the Court may impose: a 'basic' level of supervision and an 'enhanced' level of supervision. The detail of what is involved in each level of supervision will be elaborated on in guidance and codes to be made under the 2016 Law. The intention is that 'enhanced' supervision will be required where the Court considers that, although a particular person is best placed to act in the role of delegate because, for example, they are a close family member to P, the Court may be concerned about that person's ability to manage certain aspects of P's affairs or it is anticipated that acting as delegate may involve some particularly complex or substantial dealings which the Court considers should be closely supervised. 'Enhanced' supervision will require the Viscount to make frequent contact with the delegate, and may involve regular visits and reporting

requirements. A ‘basic’ level of supervision might be required, for example, where the Court has little concern about the delegate’s performance of the role but that there are a series of ongoing dealings that, overall, would benefit from a review from time to time. A ‘basic’ level of supervision will require only occasional contact by the Viscount, and might simply involve a ‘check-in’ phone call on a monthly or quarterly basis, for example.

Delegate’s professional fees

The Regulations also provide the Minister with the power, by Order, to make provision as to the charging of professional fees by delegates in respect of their functions. Under the [Mental Health Rules 1971](#) (the “1971 Rules”) (Rule 13) a scale is provided against which curators may charge for remuneration for their services based on the gross annual income of fees of curators and, in Rule 13(2)(a), provides that *“a curator being an advocate, solicitor or other professional person shall be entitled to charge and be paid out of the interdict’s estate usual professional fees for doing, or properly incurred by the curator in employing another professional person to do, in connection with the administration of the interdict’s estate, any work normally requiring professional assistance.”*

The 1971 Rules will fall away with the repeal of the 1969 Law and the removal of curatorship, and new Rules will be made in that regard; however, it is intended that an Order will be made on the implementation of the 2016 Law that will set out clear provision as to the circumstances in which delegates may charge professional fees, and the conditions and checks on the charging of those fees. That Order will, it is anticipated, be developed in conjunction with those firms and individuals who are currently, or who typically, provide curator services.

Transitional and saving provisions

The Regulations will make provision for the transition of those whose affairs are managed through curatorship under the 1969 Law to the court-appointed delegate system to be implemented under Part 4 of the 2016 Law (see Regulation 22). The Regulations make clear provision for bringing all existing curatorship cases across into the delegate system at the point at which the 2016 Law comes into force.

In general terms, the arrangements for all former curators will cover the following: (i) ascribing former curators with delegate status; (ii) normalising the scope of former curators’ authority as delegate, and where necessary putting in place arrangements to assist lay-curators with the change to their role; and normalising obligations around reporting. Professional former curators transitioning across to delegates will also be subject to controls around fees that they may charge for performing the delegate role, and all former curators transitioning to delegate will be subject to regulation by the Viscount.

The objective of Regulation 22 is to ensure that there is a smooth transition from the 1969 Law into the 2016 Law for current curators, but most importantly to ensure the continued and efficient management of the affairs of those who lack capacity.

Financial and manpower implications

The cost to health and social services for implementing these draft Regulations has been included in the overall funding within HSSD P82 and through the 2016–2019 MTFP, which covers the implementation of the 2016 Law. The cost to the Viscount’s Department has been transferred from Treasury and Resources covering the period of the 2016–2019 MTFP. The indicative requirements to maintain the new Law from 2020 and beyond have been identified by HSSD and the non-ministerial departments, and are included as indicative requirements for growth funding within the next MTFP

process. There are no additional financial or staffing implications for the States arising from the adoption of these draft Regulations.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for Health and Social Services, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Explanatory Note

These Regulations would make provision for the supervision by the Viscount of certain aspects of the exercise of functions by attorneys and delegates, both being roles created under, respectively, Parts 2 and 4 of the Capacity and Self-Determination (Jersey) Law 2016 (the “Law”) in relation to the representation of persons lacking capacity within the meaning given by that Law. By *Regulation 22*, provision would also be made for the transition from the system of representation by curators (under the Mental Health (Jersey) Law 1969, which would be repealed by the Mental Health (Jersey) Law 2016) to that of representation by delegates under Part 4 of the Law.

Regulation 1 is an interpretation provision. By *Regulation 2*, the Viscount would be designated as the person having responsibility for matters relating to supervision of conduct of attorneys and delegates, monitoring compliance by such persons with the Law and with the terms of their authority, and investigating complaints against them. *Regulation 3* would define the scope of the Viscount’s powers of investigation in response to representations received, including complaints: in particular, a power to require information and reports. *Regulation 4* would permit a person required by the Viscount to submit a report to request more time for doing so. *Regulation 5* sets out the additional powers of investigation conferred upon the Viscount for the purpose of exercising the designated responsibilities or other functions under the Regulations, including powers to attend and interview persons. *Regulation 6* would give the Viscount the power to request final reports where an attorney’s or delegate’s function ceases for any of the reasons (including the death of the person represented) set out in paragraph (1) of that Regulation. *Regulation 7* would deal with the Viscount’s power to draw complaints to the attention of the Royal Court. *Regulation 8* would permit the Viscount to share certain information with the Court, the Minister or such other persons as the Viscount thinks fit.

Regulation 9 would enable the Viscount to receive reports and deal with representations from a person other than an attorney or delegate authorized by the Court to carry out a transaction on behalf of a person lacking capacity. *Regulation 10* provides that functions conferred on the Viscount by Regulations 3 to 9 remain exercisable even though the person represented has died. *Regulation 11* would give an attorney or a delegate the right to require the Viscount to reconsider a decision made under Regulations 3 to 8. *Regulation 12* would set out additional regulatory functions of the Viscount, including powers to report to the Court and to issue guidance to attorneys and delegates.

Regulation 13 would deal with the manner in which a security requested by the Court must be given by a delegate, and also provide that the Court must notify the Viscount of the arrangements made under the Regulation in respect of a security, and direct that the Viscount shall be responsible for the enforcement of such security. *Regulation 14* would also deal with the relationship between the Court and the Viscount, where the Court determines that a delegate should be supervised by the Viscount in the performance of the delegate’s functions. *Regulation 15* would make detailed provision in relation to the payment of fees by a delegate where such supervision is provided.

The Viscount may also act as a delegate, and so *Regulation 16* would disapply Regulations 3, 4, 6 and 10 to 12 from the Viscount when acting in that capacity. *Regulation 17* would provide for a limitation of liability of the Viscount or members of the Viscount’s Department.

Regulation 18 would confer a power on the Minister to make Orders as to professional fees to be charged by delegates in respect of their functions.

Regulations 19 to 21 create offences of, of, respectively, providing false or misleading information, obstruction, and disclosing confidential personal information, punishable in each case by a fine of level 3 on the standard scale (the maximum fine at level 3 being £10,000 under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993).

Regulation 23 would give the title by which these Regulations may be cited and provide for them to come into force immediately following the commencement of the Capacity and Self-Determination (Amendment) (Jersey) Law 201-, which would make a minor correction to the enabling power in Article 36 of the Capacity and Self-Determination (Jersey) Law 2016, under which these Regulations would in part be made.



Jersey

DRAFT CAPACITY AND SELF-DETERMINATION (SUPERVISION OF DELEGATES ETC.) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

1	Interpretation	15
2	Designated person or office.....	15
3	Powers of investigation where representations etc. received	15
4	Application for additional time to submit a report	16
5	Powers of investigation: general	17
6	Power to request final reports concerning delegates	18
7	Power to draw complaints to the attention of the Court	18
8	Power to share information	19
9	Functions in relation to persons carrying out specific transactions.....	19
10	Powers and functions exercisable on death of P	20
11	Right to require reconsideration of Viscount's decisions	20
12	General regulatory functions of Viscount	20
13	Security to be given by delegates	21
14	Court's determination as to supervision of delegate	21
15	Fees for supervision of delegate.....	22
16	Viscount acting as delegate: application of Regulations, etc.	23
17	Limitation of liability of Viscount.....	23
18	Orders as to professional fees of delegates	23
19	Offence of providing false or misleading information	24
20	Offence of obstruction.....	24
21	Offence of disclosing confidential personal information	24
22	Transitional and saving provisions.....	25
23	Citation and commencement	26



Jersey

DRAFT CAPACITY AND SELF-DETERMINATION (SUPERVISION OF DELEGATES ETC.) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 33, 36, and 69 of the Capacity and Self-Determination (Jersey) Law 2016¹, have made the following Regulations –

1 Interpretation

In these Regulations –

- (a) the “Law” means the Capacity and Self-Determination (Jersey) Law 2016²;
- (b) “attorney” means a person on whom authority is conferred by a lasting power of attorney under Part 2 of the Law; and
- (c) a reference (without further specification) to “P” is a reference to the person who is the person so designated under Part 2 or, as the case may be, Part 4 of the Law.

2 Designated person or office

- (1) The Viscount is designated as having responsibility for the matters set out in Article 36(1)(a) to (c) of the Law and shall exercise such responsibility in accordance with the further provision made by these Regulations.
- (2) For the purpose of exercising such responsibility the Viscount may enter into all such arrangements, including by or with any other person, as the Viscount may consider necessary or expedient.

3 Powers of investigation where representations etc. received

- (1) This Regulation applies where –
 - (a) the Viscount has received representations (including, but not limited to, complaints) about the exercise of powers, or a failure to exercise powers, by an attorney or a delegate; or

-
- (b) it otherwise appears to the Viscount that there are circumstances, such as described in paragraph (2), justifying investigation.
 - (2) The circumstances mentioned in paragraph (1)(b) are such circumstances as –
 - (a) give the Viscount sufficient cause to believe that the attorney or delegate has behaved, is behaving or proposes to behave –
 - (i) in contravention of the terms, or outside the scope, of his or her appointment, or
 - (ii) otherwise not in P’s best interests;
 - (b) give rise to concerns on the part of the Viscount about the conduct of the attorney or delegate (including, but not limited to, the level of fees charged or proposed to be charged by a delegate);
 - (c) suggest that an attorney or a delegate has failed to comply with an order made or directions given by the Court; or
 - (d) otherwise constitute good reason, in the view of the Viscount, to seek further information about an attorney’s or delegate’s discharge of his or her functions.
 - (3) Where this Regulation applies, the Viscount may –
 - (a) by notice in writing given to the attorney or delegate, require the attorney or delegate to provide –
 - (i) such information (including accounts) or documents as may be specified, or as are of such description as may be specified, and
 - (ii) such reports as the Viscount may require, from the attorney or delegate, as to the exercise of his or her functions,and in either case, to do so in such a manner and before the end of such reasonable period and at such place as may be specified; and
 - (b) require that an act or decision, or a proposed act or decision, by an attorney or a delegate be suspended or postponed until such time as, for the purpose of concluding the investigation, the Viscount may reasonably require.
 - (4) Where any information or document is provided to the Viscount under paragraph (3)(a)(i), the Viscount may further require such information to be verified, or such document to be authenticated, in such reasonable manner as the Viscount may see fit.
 - (5) Nothing in these Regulations shall require the Viscount to investigate, consider or determine any complaint if, in the Viscount’s opinion –
 - (a) the subject matter of the complaint is trivial; or
 - (b) the complaint is frivolous or vexatious or is not made in good faith.

4 Application for additional time to submit a report

- (1) A person required under Regulation 3(3)(a)(ii) to submit a report may make an application to the Viscount to request more time for doing so.
- (2) An application under paragraph (1) must –

- (a) state the grounds for requesting more time; and
 - (b) contain, or be accompanied by, such information as the Viscount may reasonably require to determine the application.
- (3) The Viscount may, in response to an application under paragraph (1), grant such extension of time as the Viscount may consider reasonable.

5 Powers of investigation: general

- (1) For the purpose of further enabling the Viscount to exercise responsibility under the Law or functions under these Regulations, the Viscount may exercise the powers conferred by paragraphs (2), (3), and (5) to (7).
- (2) The Viscount may, at all reasonable times, examine and take copies of any record kept in relation to P –
- (a) by the Minister or by the Health and Social Services Department, and relevant to a decision made or proposed to be made on behalf of P;
 - (b) by –
 - (i) a person registered under the Health Care (Registration) (Jersey) Law 1995³ or the Nursing and Residential Homes (Jersey) Law 1994⁴, or
 - (ii) any person, other than such a person as mentioned in subparagraph (b)(i), providing domiciliary care to P; and
 - (c) by persons or bodies carrying on the business of providing financial services within the meaning given to that expression by Article 1(1) of the Financial Services Commission (Jersey) Law 1998⁵; or
 - (d) by the Judicial Greffe.
- (3) The Viscount, or a person authorized by the Viscount to do so, may interview an attorney, a delegate, P, or such other person and by such means (subject to and in accordance with paragraphs (4) to (6)), including by visiting the person, as the Viscount may reasonably consider necessary.
- (4) Where it is proposed to exercise the power conferred by paragraph (3) by visiting a person, the Viscount or the authorized person must notify, or make arrangements to notify, the person to be interviewed of –
- (a) the proposed date, time and place of the visit;
 - (b) to the extent that it is practicable to do so, any specific matters which are the subject of the interview; and
 - (c) any proposal to inform any person, other than a person mentioned in paragraph (3), of the interview.
- (5) The Viscount, or a person authorized by the Viscount to do so, may with P's consent interview P privately without the attendance of P's attorney or delegate.

- (6) The Viscount, or a person authorized by the Viscount to do so, may request an attorney or a delegate to attend for interview at the Viscount's offices at a specified date and time.
- (7) For the purposes of investigation into a complaint received by the Viscount, the Viscount may consult such persons, being persons having expertise in the matter in respect of which the complaint is made, as the Viscount may see fit.

6 Power to request final reports concerning delegates

- (1) This Regulation applies in any case where –
 - (a) P, being a person in relation to whom a delegate was appointed under Part 4 of the Law, has died;
 - (b) a delegate has become incapable of carrying out his or her function as such, or has died;
 - (c) the Court has made an order discharging a delegate; or
 - (d) a delegate otherwise ceases to be under a duty to discharge his or her function as such.
- (2) Where the case in which this Regulation applies is that described –
 - (a) in paragraph (1)(a), the delegate must notify the Viscount of P's death;
 - (b) in paragraph (1)(c), the Judicial Greffe must notify the Viscount of the order of the Court;
 - (c) in paragraph (1)(d), the delegate must notify the Viscount of the discharge.
- (3) The Viscount may require an attorney or delegate (or, in the case where the delegate has died, his or her personal representatives or such other persons as the Viscount considers appropriate) to submit –
 - (a) at such place;
 - (b) by the end of such reasonable period; and
 - (c) in such form and manner,as may be specified by notice in writing given to the delegate, a final report on the exercise of the delegate's function.
- (4) The Viscount must consider a final report submitted under paragraph (3), together with any other information the Viscount may have in relation to the discharge of functions by the delegate, and may, for the purpose of such consideration, request such additional information or documents from the delegate as the Viscount may consider necessary.
- (5) Where the Viscount is dissatisfied with any aspect of a final report, the Viscount may apply to the Court for an appropriate remedy (including the enforcement of any security given by a delegate).

7 Power to draw complaints to the attention of the Court

- (1) Where, following –

-
- (a) an investigation under Regulation 3; or
 - (b) the Viscount's consideration of a final report under Regulation 6, the Viscount considers it necessary or appropriate to do so, the Viscount may make, or may request the Attorney General to make, an application to the Court requesting the exercise, in relation to an attorney or a delegate, of any of the Court's powers under the Law.
- (2) In considering whether it is necessary or appropriate to exercise the power conferred by paragraph (1), the Viscount –
- (a) must consider P's best interests; and
 - (b) may consider such other matters as the Viscount considers relevant, including (but not limited to) compliance by the attorney or delegate with any requirements of –
 - (i) the Law, and of any other applicable enactments or rules made under the Law,
 - (ii) the code of practice issued by the Minister under Article 68 of the Law,
 - (iii) guidance issued by the Viscount under Regulation 12(1)(c),
 - (iv) the terms of the lasting power of attorney (in the case of an attorney) or of appointment (in the case of a delegate), and
 - (v) orders or directions given by the Court.

8 Power to share information

Where the Viscount considers it necessary or expedient to do so, the Viscount may disclose, to the Court, the Minister or such other persons as the Viscount thinks fit, any information –

- (a) obtained by the Viscount in the exercise of a function under the Law or these Regulations; and
- (b) relating to P, to P's assets, or to an attorney or a delegate.

9 Functions in relation to persons carrying out specific transactions

- (1) This Regulation applies where, by an order made under Article 24(5) of the Law, the Court has authorized a person ("T") to carry out any transaction for or on behalf of P.
- (2) Where this Regulation applies, the Viscount has the functions of –
 - (a) receiving any reports from T which the Court may require; and
 - (b) dealing with representations (including complaints) about –
 - (i) the way in which the transaction has been or is being carried out, or
 - (ii) any failure to carry out the transaction.
- (3) The provisions of Regulations 3 to 6 shall have effect in relation to T as though T were an attorney or a delegate.

10 Powers and functions exercisable on death of P

The powers and functions conferred by Regulations 3 to 9 shall remain exercisable by the Viscount notwithstanding the fact that P has died.

11 Right to require reconsideration of Viscount's decisions

- (1) An attorney or a delegate may require the Viscount to reconsider any decision made by the Viscount under Regulations 3 to 8 in relation to that attorney or delegate.
- (2) The right conferred by paragraph (1) is exercisable by the attorney or delegate giving notice in writing to the Viscount within the period of 21 days beginning with the date on which notice of the decision was given to the attorney or delegate.
- (3) Notice given in accordance with paragraph (2) must –
 - (a) state the grounds for the request for reconsideration; and
 - (b) contain, or be accompanied by, any relevant information or documents.
- (4) At any time after receiving the notice and before reconsidering the decision to which it relates, the Viscount may require the attorney or delegate to provide such further information, or to produce such documents, as the Viscount reasonably considers necessary to enable reconsideration of the decision.
- (5) Following reconsideration, the Viscount must give to the attorney or delegate –
 - (a) notice in writing of the decision on reconsideration; and
 - (b) if the previous decision is upheld, a statement in writing of the reasons for upholding it.

12 General regulatory functions of Viscount

- (1) For the purposes of exercising responsibility for the matters in relation to which the Viscount is designated by Regulation 2, the Viscount may –
 - (a) review the activities of delegates (whether individually or by reference to selected classes of delegates), and for this purpose and from time to time request reports in writing from delegates as to such matters as the Viscount may reasonably consider necessary and appropriate;
 - (b) submit, and where appropriate publish, such reports on the activities of attorneys and delegates, to the Minister, the Court and to such other persons as the Viscount may reasonably consider necessary and appropriate; and
 - (c) following any such review as mentioned in sub-paragraph (a) –
 - (i) issue such guidance to delegates (in addition and without prejudice to any code of practice issued by the Minister under Article 68 of the Law), and
 - (ii) for this purpose consult such persons,

as the Viscount may consider necessary and appropriate.

- (2) In the exercise of any function under paragraph (1), the Viscount may, by notice in writing given to any person, require the person –
 - (a) to provide such information (including accounts) or documents as may be specified, or as are of such description as may be specified; and
 - (b) to do so in such a manner and before the end of such reasonable period and at such place as may be specified.

13 Security to be given by delegates

- (1) Where, in the exercise of its powers under Article 34(8)(a) of the Law, the Court orders a delegate to give to the Judicial Greffier, or to such other person as the Court may direct, security for the delegate's discharge of his or her functions, that security must be given –
 - (a) by means of a bond for such amount as the Court may think fit; or
 - (b) by such other means as the Court may direct.
- (2) For the purposes of paragraph (1), the Court may require the delegate to provide to the Court such endorsements, guarantees or undertakings, in such form or manner, as to the provision of security as the Court may specify.
- (3) Where –
 - (a) security is given to the Court in accordance with this Regulation; and
 - (b) any premium is payable in respect of that security,the delegate must provide, on such dates or at such intervals as the Court may determine, such information or evidence as the Court may specify as to payment of the premium.
- (4) Where the Court orders the enforcement of any security given in accordance with this Regulation, the Court must notify the Viscount of the arrangements made in respect of that security under this Regulation, and direct that the Viscount shall be responsible for enforcement of that security.

14 Court's determination as to supervision of delegate

Where, under Article 24(2)(b), (4) or (5) of the Law, the Court exercises its power to appoint a delegate or to vary the powers conferred on a delegate, the Court shall consider whether or not the delegate will require to be supervised by the Viscount in the performance of his or her functions as delegate, and –

- (a) for the purposes of such consideration, the Court may request such information or reports from such persons as the Court may reasonably consider necessary; and
- (b) if the Court determines that the delegate should be so supervised, the Court shall further determine the level of supervision required, and shall order accordingly.

15 Fees for supervision of delegate

- (1) Where, under Regulation 14, the Court makes an order for the supervision of a delegate, the Viscount shall –
 - (a) agree a supervision plan with the delegate; and
 - (b) require the delegate to pay to the Viscount such an amount by way of a fee in relation to the supervision (a “supervision fee”) as may, by reference to the prescribed scale of fees, be appropriate.
- (2) The supervision fee shall be payable within 30 days of the date of the requirement made under paragraph (1)(b) and thereafter annually throughout the duration of the plan and, subject to paragraphs (3) to (5) –
 - (a) shall be payable –
 - (i) throughout the duration of the plan, within 30 days of the date on which a requirement for payment of the fee is made, or
 - (ii) upon termination of the plan, within 30 days of that termination; and
 - (b) be paid by the delegate out of P’s assets.
- (3) Where the period in respect of which a supervision fee is payable is less than one year, the amount of the fee shall be in the same proportion to the full fee prescribed for a year as the proportion that period bears to one year.
- (4) No amount of any supervision fee shall be payable where, at the date when the fee would otherwise be payable under paragraph (2)(a) –
 - (a) P is in receipt of a qualifying benefit; or
 - (b) in an case where P is not in receipt of such a benefit, P’s assets are insufficient to pay the amount.
- (5) Without prejudice to paragraph (3), in any case other than one described in that paragraph where the Viscount considers that the imposition of a supervision fee would, in the circumstances of the particular case, cause undue hardship, the Viscount may determine that the fee is to be reduced (or, where the fee has already been paid, remitted) by such amount as the Viscount sees fit, including by the full amount of the fee.
- (6) An application for the remission of the whole or part of a supervision fee under paragraph (5) shall be made to the Viscount within the period of 6 months beginning with the date on which the request for payment of the fee is made under paragraph (1)(b).
- (7) For the purpose of paragraph (4)(a), P is in receipt of a “qualifying benefit” if –
 - (a) P is a member of a household in receipt of income support under the Income Support (Jersey) Law 2007⁶;
 - (b) P meets the requirements for a special payment to defray the expenses of long-term care being provided to P, under Regulation 2 of the Income Support (Special Payments) (Long-Term Care) (Jersey) Regulations 2014⁷;

- (c) P receives a grant under Article 11, or a loan under Article 12, of the Long-Term Care (Benefits) (Jersey) Order 2014⁸ for the purpose of meeting the weekly costs mentioned in Article 9(c) of that Order; or
- (d) P is a person admitted to the health bonus scheme pursuant to a determination under Article 5 of the Social Security (Health Bonus Scheme) (Jersey) Order 2016⁹.

16 Viscount acting as delegate: application of Regulations, etc.

- (1) Regulations 3, 4, 6, and 10 to 12 shall not apply to the Viscount acting in the capacity of a delegate under Part 4 of the Law.
- (2) A code of practice issued under Article 68 of the Law shall apply to the Viscount acting as mentioned in paragraph (1) –
 - (a) to the extent that the code is relevant to the circumstances of the particular appointment of the Viscount as delegate; and
 - (b) taking into account the needs, and assets, of P in the particular case in question.
- (3) Nothing in these Regulations shall be taken to restrict the right of any person, on behalf of P, to make a complaint to the Viscount or to the Court in respect of any default or neglect in the performance by the Viscount of the Viscount's function as a delegate.

17 Limitation of liability of Viscount

- (1) The Viscount, or any member of the Viscount's Department, shall not be liable in damages for anything done or omitted in the discharge of or purported discharge of any function under the Law, these Regulations or any other enactment made under the Law.
- (2) Paragraph (1) does not apply –
 - (a) if it is shown that the act was done, or the omission made, in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000¹⁰.

18 Orders as to professional fees of delegates

- (1) The Minister may by Order make provision as to professional fees to be charged by delegates in respect of their functions, including in particular (but not limited to) provision as to the matters listed in paragraph (2).
- (2) The matters mentioned in paragraph (1) are –
 - (a) the amount of fees, whether by reference to a prescribed scale of fees or by reference to a percentage of P's assets, or otherwise;
 - (b) the services in respect of which fees are chargeable;

- (c) requirements to provide estimates of fees to the Court, including the matters or services as to which such estimates must be provided;
- (d) requirements for agreement by the Court of such estimates and powers of the Court to confirm such estimates;
- (e) powers of the Court to impose terms and conditions, in relation to particular estimates of fees or to such estimates generally;
- (f) powers of the Viscount to refer any matter or question arising as to such fees or estimates to the Court for the Court's determination;
- (g) powers of the Court and of the Viscount to seek further information as to fees or estimates from the delegate or from any other person concerned;
- (h) powers of the Court and of the Viscount exercisable in cases where an estimate of fees is exceeded; and
- (i) cases in which exemptions from, or reductions or remissions of fees may be granted.

19 Offence of providing false or misleading information

Where, in response to a request made under the Law or these Regulations for provision of any information, document or report, an attorney or delegate knowingly or recklessly provides information or a document or report which is, in a material particular, false or misleading, the attorney or delegate is guilty of an offence and liable to a fine of level 3 on the standard scale.

20 Offence of obstruction

An attorney or delegate who, without reasonable cause or excuse, refuses –

- (a) to allow the interviewing (including visiting) of P by the Viscount or any other person authorized by the Viscount under Regulation 5; or
- (b) to provide any information, document or report to the Viscount or other person authorized by the Viscount under that Regulation,

or who otherwise obstructs any such person in the exercise of his or her functions under these Regulations, is guilty of an offence and liable to a fine of level 3 on the standard scale.

21 Offence of disclosing confidential personal information

- (1) An attorney or delegate who knowingly or recklessly discloses confidential information relating to P, other than in the exercise of his or her authority as attorney or delegate in accordance with the Law or these Regulations, is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (2) For the purposes of paragraph (1) “confidential information” is any information relating to P which has been obtained by the attorney or delegate in the course of the exercise of his or her authority as such.

-
- (3) It is a defence for a person charged with an offence under paragraph (1) to prove that, at the time of the alleged offence –
 - (a) any of the circumstances in paragraph (4) applied in relation to the disclosure; or
 - (b) the person reasonably believed that any of those circumstances so applied.
 - (4) The circumstances mentioned in paragraph (3) are that –
 - (a) the disclosure was made in such a form or manner that P could not be identified from the information disclosed;
 - (b) the disclosure was made with P’s consent;
 - (c) the information disclosed had previously been lawfully disclosed to the public;
 - (d) the disclosure was made in accordance with any enactment or order of a court;
 - (e) the disclosure was necessary or expedient for the purpose of protecting P’s best interests; or
 - (f) it was necessary or expedient for the disclosure to be made to a person or body for the purpose of enabling that person or body to exercise functions under any enactment.
 - (5) If a person relies on a defence under paragraph (3) and evidence is adduced which is sufficient to raise an issue as to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

22 Transitional and saving provisions

- (1) In this Regulation, a reference to the “commencement day” is to the day on which the Capacity and Self-Determination (Jersey) Law 2016¹¹ (the “Capacity Law”) comes into force, and a reference to a delegate is to a delegate within the meaning of Part 4 of the Capacity Law.
- (2) Where, immediately before the commencement day, a curator appointed under Article 43 of the Mental Health (Jersey) Law 1969¹² is managing and administering the property and affairs of a person in accordance with that Article, Part 4 of the Capacity Law shall apply, on and after the commencement day, subject to and with the further modifications set out in paragraphs (3) and (4), and –
 - (a) in relation to the curator, as though the curator were a delegate appointed under that Part, having given the consent required by Article 34(2) of the Capacity Law, and having all powers; and
 - (b) in relation to the person whose property and affairs are managed and administered by the curator, as though that person were “P” within the meaning of that Part.
- (3) Notwithstanding the repeal of the Mental Health (Jersey) Law 1969¹³ by the Mental Health (Jersey) Law 2016¹⁴ –
 - (a) the provisions of Article 43(8), (9) (except for sub-paragraph (a)) and (10) of the Mental Health (Jersey) Law 1969 shall continue to

-
- apply, on or after the commencement date, so that a person to whom paragraph (2)(a) would otherwise apply may cease to hold office (whether as curator or as delegate) under any of those provisions;
- (b) where a curator declines to act as a delegate, he or she may resign his or her office and Article 43(11) of the Mental Health (Jersey) Law 1969 shall continue to have effect for the purpose of enabling such resignation, but as though for the power of the Court under that provision to appoint some other person as curator there were substituted the power of the Court to appoint a delegate under Article 24 of the Capacity Law; and
 - (c) Article 43(20), (21) and (24) of the Mental Health (Jersey) Law 1969 shall continue to have effect as though the requirements for submitting inventories and accounts under those provisions were requirements made by the Court under Article 34(8)(b) of the Capacity Law for reports to be provided to the Judicial Greffier, except that Article 43(20)(b) of the Mental Health (Jersey) Law 1969 shall apply as though for the time limit of 30 days in that provision there were substituted a limit of 90 days.
- (4) A person becoming a delegate by virtue of the application of paragraph (2) shall have all such powers as are exercisable by a delegate appointed under Part 4 of the Capacity Law, subject to any conditions or restrictions which may be imposed by the Court of its own motion under that Part or pursuant to an application made to the Court by that person.

23 Citation and commencement

These Regulations may be cited as the Capacity and Self-Determination (Supervision of Delegates etc.) (Jersey) Regulations 201- and shall come into force immediately following the commencement of the Capacity and Self-Determination (Amendment) (Jersey) Law 201-¹⁵.

-
- 1 *L.30/2016*
 - 2 *L.30/2016*
 - 3 *chapter 20.300*
 - 4 *chapter 20.725*
 - 5 *chapter 13.250*
 - 6 *chapter 26.550*
 - 7 *chapter 26.550.72*
 - 8 *chapter 26.600.10*
 - 9 *chapter 26.880.20*
 - 10 *chapter 15.350*
 - 11 *L.30/2016*
 - 12 *chapter 20.650*
 - 13 *chapter 20.650*
 - 14 *L.29/2016*
 - 15 *P.42/2018*